

HR INFORMATION

Resource Guide

Prepared by the State
Personnel Division

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Introduction

The State Personnel Division of Administrative Services provides a variety of Human Resource services to State Agencies. The functional areas within State Personnel that provide these services include:

- Equal Opportunity and Workforce Diversity
- Recruitment
- Temporary Employment Services
- Classification and Compensation
- Organizational Effectiveness
- Employee Services

This guide was developed to assist client agencies with information that supplements the State Personnel Rules, and is not intended to replace those rules. Rather, the intent of this guide is to provide instructions and insights on internal processes with the purpose of assisting State Agencies to navigate through centralized processes provided by the State Personnel Division. The emphasis is on Classification and Compensation functions; although procedures and processes for functions facilitated through other units within State Personnel are also contained herein.

Statutes

A variety of Nebraska Revised Statutes describe the purpose and responsibilities of the State Personnel Division. Statutes 81-1301 through 81-1306 are the statutes directly applicable to the State Personnel Division, and the responsibilities described in those statutes are described below:

- Promote economy and efficiency in state government through the selection, employment, and effective utilization of qualified persons in all departments and agencies of the state
- Provide equal opportunity to qualified persons in all departments and agencies of the state
- Avoid salary competition among government departments and agencies to secure or retain the services of equally qualified employees for similar positions

- Retain maximum authority and responsibility at the department and agency level for decisions to select or terminate employees, or for other facets of personnel management as may be consistent with the rulemaking authority of the State Personnel Division for the development of uniform state personnel administrative procedures
- Establish the necessary procedures to assure reasonably uniform and consistent personnel practices and provide a reliable basis for personnel cost projections and staffing patterns
- Establish uniform control over the description of and compensation for positions in all departments and agencies so that position titles and duties have similar meanings throughout the state service and provide equal pay for persons holding similar positions in the state's service.

Duties of the Director of Personnel

Nebraska Rev. Statute 81-1307 specifically describes the duties of the Director of Personnel. The Director of Personnel, subject to the review powers of the State Personnel Board, has authority to adopt, promulgate, and enforce rules and regulations pertaining to personnel policy and administrative systems. The Director of Personnel is responsible for specific administrative systems including, but not limited to:

Employment Services

- Administration of the Personnel Division
- General employment policies and procedures
- Position classification plans
- Job descriptions
- Job specifications
- Salary or pay plans
- Staffing patterns
- Recruiting of qualified applicants for employment and the maintenance of qualified applicants for employment for all positions in State Government



Personnel Records

- A system of records and statistical reports containing general data on all employees, including current salary levels and such other information as may be required by the operating needs of state departments and agencies and the budget division

- Standards for the development and maintenance of personnel to be maintained within operating departments of state government

Personnel Management

- Minimum standards for evaluation of employee efficiency and a system of regular evaluation of employee performance
- Administrative guidelines governing such matters as hours of work, promotions, transfers, demotions, probation, terminations, reductions-in-force, salary actions, and other such matters as may not be otherwise provided for by law or labor contract
- Administrative policies and general procedural instructions for use by all state agencies relating to such matters as employee benefits, vacation, sick leave, holidays, insurance, sickness and accident benefits, and other employee benefits as the Legislature may from time to time prescribe
- A system of formally defined relationships between the personnel division and departments and agencies to be covered by the State Personnel System

Salary and Wage Survey

- Measuring through the use of surveys, the state's comparative level of employee compensation with the labor market

Staffing Patterns

- Staffing patterns for each department and agency of state government that conform to those authorized by the budget division
- Revisions to staffing patterns of all departments and agencies that have been approved by the budget division
- Merit increases provided for any employee of the state that are the result of positive action by the appropriate supervisor
- The state's pay plan, as enacted by the Legislature, together with such amendments as may occur, is explained in appropriate handbooks for employees of the state

Temporary Employees

- The director shall administer the Temporary Employee Pool (Specialized Office Services, or SOS) containing applicants from which state agencies can draw when in need of a short-term labor supply

- State agencies must receive approval from the director before hiring any temporary employee

Employee Recognition Program

- The director shall administer an employee recognition program for state employees. The program shall serve as the authorized program for honoring state employees for dedicated and quality service to the government of the State of Nebraska.

State Personnel System

Only classified state agencies are subject to the Classified System Personnel Rules. These agencies also include certain boards and commissions. Non-classified agencies, or constitutional agencies, are not required to follow these rules. Classified & Non-Classified Agencies, Boards, or Commissions are listed in the chart below:

Classified Agencies

Abstracter's Board of Examiners
Accountability & Disclosure Commission
Administrative Services
Department of Aeronautics
Department of Agriculture
Nebraska Arts Council
Athletic Commission
Department of Banking and Finance
Barber Examiner's Board
Blind & Visually Impaired
Branch Rail Revitalization Council
Capitol Commission
Community Corrections Council
Corn Board
Department of Corrections
Crime Commission
Dairy Industry Development Board
Commission on the Deaf & Hard of Hearing
Dry Bean Commission
Department of Economic Development
Nebraska Educational Telecommunications
Commission
Electrical Board
Department of Energy

Non-Classified Agencies

*Attorney General**
*Brand Committee***
Coordinating Commission for Postsecondary
*Education**
*Department of Education**
*Educational Lands and Funds**
*Governor's Office**
*Industrial Relations Commission**
*Legislature**
*Lieutenant Governor's Office**
*Policy Research Office***
*Public Advocacy Commission***
*Public Service Commission**
*Secretary of State**
*State Auditor**
*State College System**
*State Treasurer**
*Supreme Court**
*Tax Equalization and Review Commission**
*University of Nebraska**
*Worker's Compensation Court**

Classified Agencies-Continued

*Engineers and Architects Board
Department of Environmental Quality
Equal Opportunity Commission
Ethanol Board
Fire Marshal
Foster Care Review Board
Game & Parks Commission
Geologists Board
Grain Sorghum Board
Department of Health and Human Services
Nebraska State Historical Society
Commission on Indian Affairs
Department of Insurance
Nebraska Investment Council
Department of Labor
Landscape and Architects Board
Library Commission
Liquor Control Commission
Mexican-American Commission
Military
Department of Motor Vehicles
Motor Vehicle Industry Licensing Board
Department of Natural Resources
Oil and Gas Commission
Parole Board
Power Review Board
Public Accountancy Board
Racing Commission
Real Property Appraiser Board
Real Estate Commission
Retirement Systems
Department of Revenue
Department of Roads
Rural Development Commission
State Patrol
Veteran's Affairs
Wheat Board
Women's Commission*

** Constitutional Agencies, which are created by the Nebraska State Constitution. All Constitutional agencies are non-classified.*

*** These agencies are not Constitutional; however, they are non-classified per statute.*

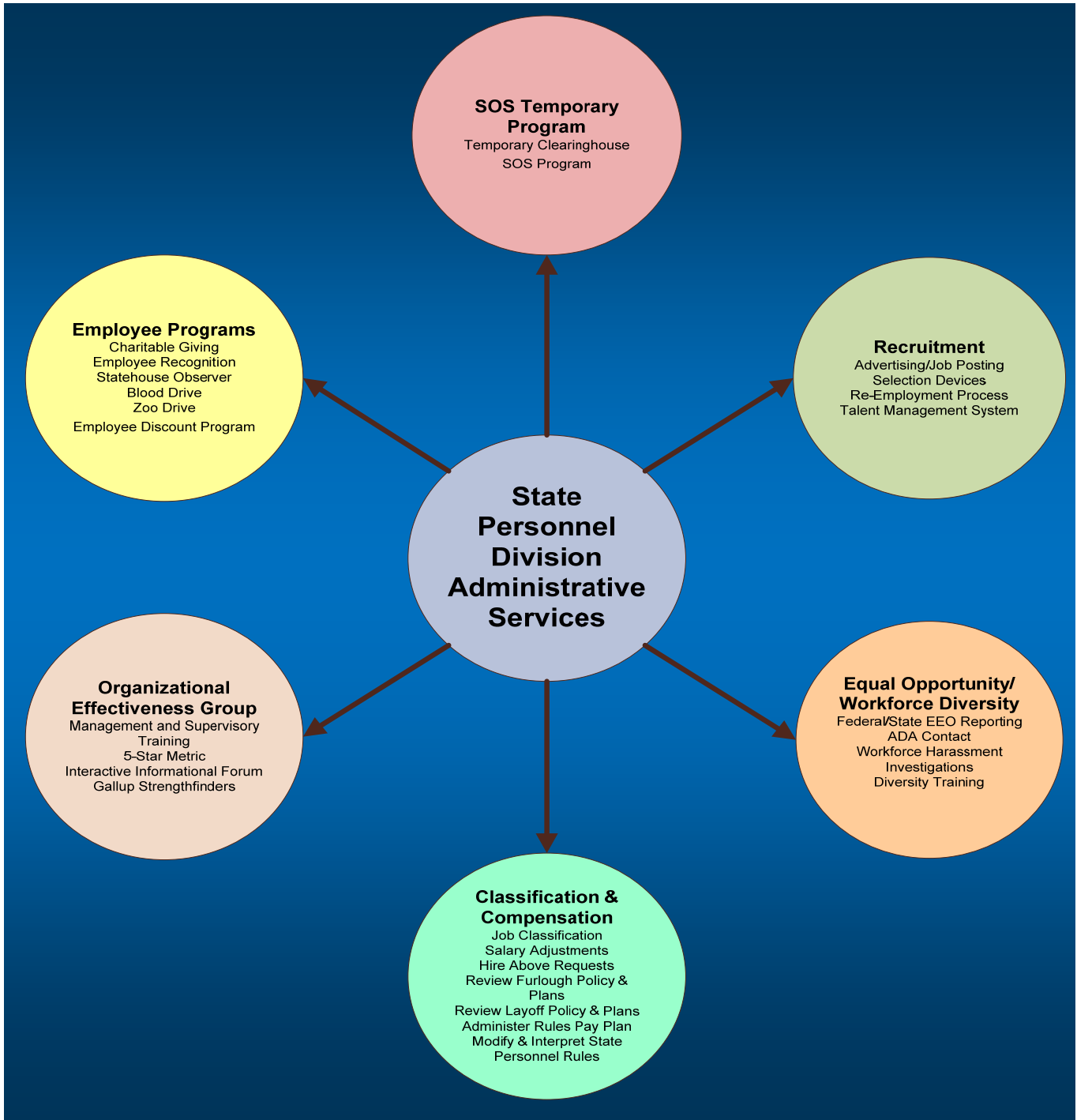
Within the classified system, the State Personnel Division provides a variety of services. Whether an employee is covered by the State Personnel Rules, a labor contract, or is a discretionary or at-will employee determines what services the State Personnel Division will provide, or whether or not the State Personnel Rules apply. There are a number of functions, services, or rules that apply to both rules covered employees and contract covered employees.

A chart outlining which rules or services apply to employees in the Classified System follows:

Rules Covered Employees	Contract Covered Employees	Discretionary/At-Will Employees
<p><u>Classification & Compensation</u></p> <ul style="list-style-type: none"> • Position Classification • In-Grade hiring and salary adjustments • Approval of Performance Appraisal Process • Personnel Records • Furlough/Layoff policy & plan review and approval • Approve Telecommuting plans • Answer questions regarding State Personnel Rules including subjects such as probation, grievances, job sharing, flex time, travel time, leave administration, discipline. • Resource for FLSA issues <p><u>Recruitment</u></p> <ul style="list-style-type: none"> • Posting Vacancies • Selection • Temporary employee clearinghouse • SOS Temporary program • Re-employment program • TMS <p><u>Organizational Effectiveness Group</u></p> <ul style="list-style-type: none"> • Management and Supervisory Training • Gallup StrengthsFinder <p><u>Equal Opportunity/Workforce Diversity</u></p> <ul style="list-style-type: none"> • ADA Contact • Workforce Harassment Investigations • Diversity Training • EEO Reporting/Statistics <p><u>Administrative Support</u></p> <ul style="list-style-type: none"> • Approve Employee Recognition Plans • Publish Statehouse Observer • Coordinate Statewide Charitable Giving Campaign • Coordinate Governor's Employee Recognition Program 	<p><u>Classification & Compensation</u></p> <ul style="list-style-type: none"> • Position Classification • In-Grade hiring and salary adjustments (in conjunction with Employee Relations) • Approval of Performance Appraisal Process • Personnel Records • Furlough/Layoff policy & plan review and approval • Approve Telecommuting plans • Resource for FLSA issues <p><u>Recruitment</u></p> <ul style="list-style-type: none"> • Posting Vacancies • Selection • Temporary employee clearinghouse • SOS Temporary program • Re-employment program • TMS <p><u>Organizational Effectiveness Group</u></p> <ul style="list-style-type: none"> • Gallup StrengthsFinder <p><u>Equal Opportunity/Workforce Diversity</u></p> <ul style="list-style-type: none"> • ADA Contact • Workforce Harassment Investigations • Diversity Training • EEO Reporting/Statistics <p><u>Administrative Support</u></p> <ul style="list-style-type: none"> • Approve Employee Recognition Plans • Publish Statehouse Observer • Coordinate Statewide Charitable Giving Campaign • Coordinate Governor's Employee Recognition Program 	<p><u>Classification & Compensation</u></p> <ul style="list-style-type: none"> • Notify State Personnel when discretionary positions are newly created or changes occur • Resource for FLSA issues <p><u>Recruitment</u></p> <ul style="list-style-type: none"> • Posting Vacancies • TMS <p><u>Organizational Effectiveness Group</u></p> <ul style="list-style-type: none"> • Management and Supervisory Training • Gallup StrengthsFinder <p><u>Equal Opportunity/Workforce Diversity</u></p> <ul style="list-style-type: none"> • ADA Contact • Workforce Harassment Investigations • Diversity Training • EEO Reporting/Statistics <p><u>Administrative Support</u></p> <ul style="list-style-type: none"> • Publish Statehouse Observer • Coordinate Statewide Charitable Giving Campaign

State Personnel Structure

The State Personnel Division is a division within the greater Department of Administrative Services. The functional areas of the Division are depicted in the chart below.



Classification and Compensation

The Classification and Compensation unit of State Personnel provides administrative, analytical, and advisory services related to the State's classification and compensation programs. This unit designs and maintains a process that groups job duties and responsibilities into various job classes. These classes provide the basis for recruitment, compensation, and other management decisions. The Classification and Compensation unit partners with the Employee Relations Division to conduct salary surveys and to administer wages through pay plans published by the Divisions.

The Classification and Compensation unit reviews agency's reduction-in-force and furlough policies, and approves reduction-in-force and furlough plans for employees under the Classified System Personnel Rules and Regulations. Employee Relations reviews and approves reduction-in-force and furlough plans for employees covered by the NAPE/AFSCME labor contract.

Additionally, the Classification and Compensation unit answers questions concerning the Fair Labor Standards Act (FLSA) and the Classified System Personnel Rules & Regulations. The Employee Relations Division answers inquiries concerning labor contracts, the Family and Medical Leave Act (FMLA), grievances, and appeals.

This guide is designed to complement the Classified System Personnel Rules and allow for step by step instructions for job classification, salary adjustments, furlough and RIF (reduction-in-force) actions, and to assist with understanding the FLSA. It also addresses questions that are frequently asked by agencies.

Classified System Personnel Rules

To comply with the responsibilities charged by statute, the Classification and Compensation unit of State Personnel establishes and updates the Nebraska Classified System Personnel Rules, otherwise known as the "Rules." The most recent update occurred in October of 2006. The Classification and Compensation unit is also charged with interpretation of these rules.

The Rules cover a wide range of topics intended to provide consistency throughout state government, and to meet statutory obligations. Some items addressed in the Rules include employee recruitment and selection, temporary employment, probationary periods, classification, salary administration, overtime, leave, personnel records, reduction-in-force, discipline, grievances, and performance management.

Although many state employees are labor contract covered, a few sections of the State Personnel Rules are still applicable to those employees because they are classified. For example, all employees' positions are subject to job classification. Also, State Personnel is responsible to approve agency performance appraisal programs, agency recognition programs, pilot programs, and telecommuting programs. These services and applicable sections of the Rules are outlined in a chart found earlier in this guide.

Employee Status

Status of employees within the classified system varies. Definitions of employee status are listed below:

Permanent: Permanent employees are full time or part time employees who fill permanent positions classified through State Personnel and who work on an ongoing basis. Once an employee successfully completes their original probation, they become a permanent employee.

SOS Temporary: A full time or part time employee hired for a limited period of time, typically not to exceed one year (2080 hours). The employee is hired, paid by and considered an employee of the State Personnel Specialized Office Services (SOS) which is a temporary employment program, but performs work for the requesting state agency. Costs for the employee are then billed back to the requesting agency.

Agency Temporary: A full time or part time employee hired for a limited period of time, typically not to exceed one year. The employee is hired, paid by and considered an employee of the state agency for which they work. This includes on-call employees who work on an as-needed basis (but not permanent employee who work on-call).

Discretionary/Non-Classified: Chapter 1 of the Classified System Personnel Rules describes in full the use of at-will and discretionary positions. Nebraska Revised Statute 81-1316 describes these positions that are not covered by the Classified System. This statute exempts certain agencies (such as the court system, and the Public Service Commission) in addition to a number of positions (such as agency heads and some medical and examining positions). These positions are considered at-will positions.

This statute also allows discretionary positions based on an agency's size. The purpose of utilizing discretionary employees is to allow agency heads the opportunity to recruit, hire and supervise critical, confidential, or policy making personnel without restrictions from selection procedures, compensation rules, career protections and grievance privileges. Persons in these positions are paid salaries set by the agency head.

When agencies desire to create a discretionary non-classified position, the agency shall submit to the Director of State Personnel a notification to create a new position or to change a current position. The notification should also contain a listing of the number of employees in the agency for determination of the appropriate number of eligible discretionary non-classified positions.

Questions often arise about the process required to hire a current classified employee into a discretionary non-classified position. This practice is acceptable; however, the process requires a voluntary written statement of agreement by the classified employee.

Agencies are not allowed to convert a discretionary non-classified employee into a classified position while the position is occupied. Discretionary employees who wish to occupy classified positions must apply for vacancies in order to be considered for those positions.

Vacant discretionary, non-classified positions may be converted to classified positions through the classification process. Agencies must prepare and submit a PDQ (position description questionnaire) to the Director of State Personnel to initiate this process.

Both discretionary, non-classified employees and at-will employees serve at the pleasure of the appointing authority and are not subject to the Rules and Regulations of the Classified Personnel System.

Bargaining Units

All classified employees covered under the Classified System are assigned to a bargaining unit, or an employee group. Classified non-contract employees are assigned to G, K, R, D, or V or coded groups based on the kind and scope of work performed. The remaining codes are in contract covered bargaining units. Listed below are the categories and coding used to assign employees into the appropriate bargaining unit or employee grouping based on the kind of work performed.

Non-Contract Bargaining Units and/or Employee Groups and Descriptors

G= Management Group

Composed of jobs performing senior policy making and higher level managerial/administrative functions essential to the overall mission of the agency, board, or commission.

K= Confidential

Composed of specific positions at any occupational level which handle information or provide advice pertinent to the development, negotiation, and/or interpretation of

application of labor contracts, or issues related to such agreements, including human resource administrators, personnel managers/specialists, and similar jobs.

V= Supervisory Group

Composed of supervisors as defined in Neb. Rev. Statute 48-801. This statute defines a supervisor as any employee having authority, in the interest of the employer, to hire, transfer, suspend, lay-off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not a merely routine or clerical nature, but requires the use of independent judgment.

D= Doctors

Composed of jobs providing physician, dental or other medical services requiring extensive preparation and state licensure or certification by the state in a specific field of endeavor. Includes classes such as doctors, dentists, pharmacists, nurse practitioners, physician assistants and other classes.

R= Temporary Group

Composed of positions and job classes staffed by employees who are hired for a limited period of time and are not working on an on-going and continuous basis.

N= Non-Classified

Composed of specific positions, job classes or occupations not covered by the State Personnel Classified System. Positions which are coded N, are considered as discretionary or at-will.

Z= Miscellaneous

Composed of positions and job classes which are not assigned to one of the units or categories described above, such as a State Patrol Officer Candidate.

NAPE Contract Covered Bargaining Units:

A= Administrative Professional

Composed of professional employees with general business responsibilities, including accountants, buyers, personnel specialists, information technology personnel and similar classes.

C= Social Services and Counseling

Composed of generally professional level workers providing services and benefits to eligible persons, including job service personnel, income maintenance personnel, social workers, counselors and similar classes.

E= Engineering, Science, and Resources

Composed of specialized professional scientific occupations, including civil and other engineers, architects, chemists, geologists, and surveyors and similar classes.

H= Health and Human Care Professional

Composed of community health, nutrition and health service professional employees, including nurses, psychologists, pharmacists, dietitians, licensed therapists and similar classes.

I= Health and Human Care Non-Professional Bargaining Unit

Composed of institutional care classes, including nursing aides, psychiatric aides, therapy aides and similar classes.

M= Maintenance, Trades, & Technical

Composed of generally recognized blue collar and technical classes, including highway maintenance workers, carpenters, plumbers, electricians, print shop workers, auto mechanics, engineering aides and associates and similar classes.

P= Protective Services

Comprised of institutional security personnel, including correctional officers, building security guards, and similar classes.

S= Administrative Support

Comprised of clerical and administrative non-professional classes, including typists, secretaries, accounting clerks, computer operators, office service personnel, and similar classes.

X= Examining, Inspection, & Licensing

Composed of employees involved in inspecting, examining, or licensing people or facilities, including motor vehicle investigators, securities analysts, agriculture inspection specialists, and health licensing specialists.

Other Contract Covered Bargaining Units and Employee Descriptors:

T= Teachers

Composed of employees required to be licensed or certified as a teacher. Teachers are covered under the SCATA labor contract.

L= Law Enforcement

Composed of employees holding powers of arrest, including Nebraska State Patrol officers and sergeants, conservation officers, fire marshal personnel and similar classes. Law enforcement personnel are covered under the SLEBC labor contract.

Movement between Contract and Non-Contract Status:

As a result of labor negotiations that ensued in the fall of 2008, a new procedure has been developed to move employees into or out of NAPE/AFSCME labor coverage. State Personnel is now making these determinations, while consulting with Employee Relations, and the new procedure specifically addresses movement of V or K coded positions into or out of any bargaining unit position. New forms have been developed to assist State Personnel in making these determinations. These forms can be found under the forms tab on our website at:
<http://www.das.state.ne.us/personnel/classncomp/>.

V code requirements:

As mentioned earlier, V coded positions represent those that meet the statutory requirements to be a supervisor who is excluded from bargaining unit coverage.

Under state statute a "Supervisor" shall mean "any employee having authority, in the interest of the employer, to hire, transfer, suspend, lay-off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not a merely routine or clerical nature, but requires the use of independent judgment." Neb. Rev. Statute 48-801(10), (2008 Cum. Supp.)

When making requests to include or exclude a position due to supervisory status, agencies should use the Supervisory Questionnaire.

K code requirements:

Also mentioned earlier, K coded individuals meet the NLRB (National Labor Relations Board) "confidential" requirements to be excluded from bargaining unit coverage.

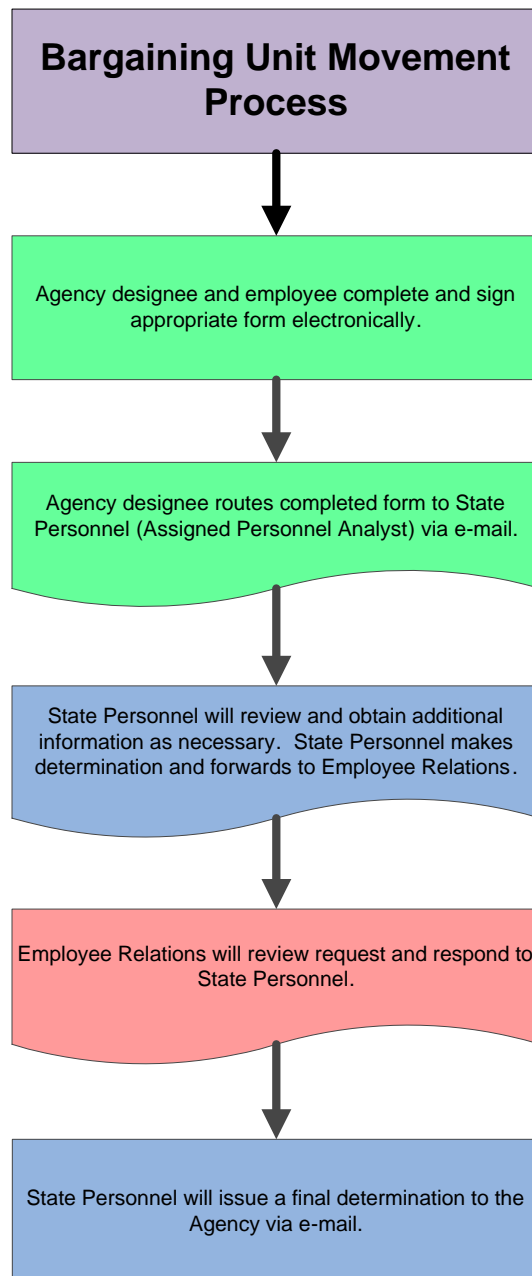
Employees who are eligible for exclusion, or who can be called "confidential" employees are defined as employees "who assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations." NLRB v. Hendricks Country Rural Electric Membership Corporation, 454 U.S. 170.108 (1981), Or "...employees having access to a public employer's confidential information pertaining to collective bargaining negotiations..." (Civilian Management Professional and Technical Employees Council of the City of Omaha, Inc., a Nebraska not-for-profit Corporation v. The City of Omaha, Nebraska, a Municipal Corporation, 6 CIR 187 (1982).)

Having access to confidential employee or agency information does not necessarily warrant exclusion from a bargaining unit. This code is used solely in relation to labor relations matters.

When making requests to include or exclude a position due to confidential status, agencies should use the Confidential Questionnaire.

Process:

The new process is entirely electronic through e-mail. When State Agencies desire to move employees in or out of a V or K coded position, the process to use follows:



Classification Process

State Personnel, as charged by statute, has a job classification plan and process in place. Position classification is the system used to classify each position within the state in accordance with the knowledge, skills, experience, and other factors in order to group classes together for purposes of providing pay equity. Jobs performing similar duties and responsibilities should be treated equitably in terms of pay, which is the purpose of classification. Job classification is the process of reviewing a position to determine the appropriate job class. The process involves job analysis and evaluation.

Within the classified system, there are approximately 1,250 existing classes. A class is established when a title and a job specification is developed for positions. One or many employees can be classified into a class. A job or class specification is the official document developed that describes the major duties and responsibilities assigned to the class. Only the State Personnel Classification and Compensation unit can create new job classes. A new class will only be created when the requested class is so unique and different that an existing class is not appropriate.

The primary tool that must be submitted to initiate the classification process is a PDQ (position description questionnaire). A PDQ should be used when an employee or agency is requesting classification to an existing class. The vast majority of classification reviews will require a PDQ.

Occasionally, a CPQ (comprehensive position questionnaire) should be used for classification. These circumstances include when a change in the salary pay line of an existing class is requested, or when an agency is requesting that a new class be created. The CPQ form is a longer version of the PDQ. Because additional analysis is required to create a new class, or to justify an increased salary pay line, the CPQ is more extensive than the PDQ, and offers State Personnel the additional information needed to perform the proper job analysis. Only agency management may request that a new class be created, or request salary pay line adjustments for Rules covered positions. Employee Relations and NAPE have agreed to meet on a quarterly basis to discuss NAPE pay range re-assignments.

The processes and methodology, which are described further in this document, are the same regardless of whether the review involves a PDQ or CPQ. The CPQ merely provides State Personnel the additional information required to create a new class or to change a salary pay line.

- PDQ's can be found under the forms tab at our website:

<http://www.das.state.ne.us/personnel/classncomp/>

- The CPQ form can be obtained through a request to your assigned Personnel Analyst

When Classification Should Occur

The goal of classification, as charged by statute, is to ensure that all positions under the classified system are in balance with the classification for similar work being performed by other state employees. A variety of occasions may arise that should prompt a classification review. Both the Rules (Chapter 7) and the NAPE/AFSCME labor contract (Article 19) address when classification is the appropriate action.

First, in all cases, when an agency has significantly changed a position's duties, a PDQ should be submitted to State Personnel. It is the responsibility of the agency to initiate this action when duties have been changed.

In the event that State Personnel becomes aware that a position is misclassified, State Personnel may request an employee's PDQ to conduct a "consistency" review to ensure that classification of positions remains equitable throughout the classified system.

Another instance where classification is required is when an agency wishes to establish a new position. For example, when the agency is allotted a new FTE (full-time equivalent position), State Personnel must review the position to establish the appropriate classification.

Classification of a position is also required when an agency wishes to change the classification of a vacant position.

Employees may request a review of their classification at any time, provided that the position has not been reviewed and/or a classification decision letter has not been issued in the previous six months for Rules covered positions, and twelve months for NAPE covered positions.

Lastly, agency management can request a reclassification review at any time if they believe the position is not correctly classified.

No position may be classified or reclassified without written authorization from the Classification and Compensation Administrator, or designee.

Classification Request Process

Depending on whether the employee is a NAPE/AFSCME or Rules covered employee, the process to request a review varies. Flow charts are provided later in this document which outlines the steps to the reclassification process based on bargaining unit status, in addition to whether or not the request originates from the employee or management. Full details regarding the classification processes can be found in Chapter 7 of the Classified System Personnel Rules, or Article 19 of the NAPE/AFSCME labor contract.

If an agency or an employee disagrees with State Personnel's determination of a Rules covered position, a reconsideration request is allowed, if initiated within 15 work-days of notification of the determination. When a reconsideration is requested within the allowed timeframe, a second Personnel Analyst is assigned to conduct the review. This Personnel Analyst will make a recommendation to the Director of State Personnel. The Director of State Personnel will then issue a final determination that is binding.

If a NAPE contract covered employee experiences a decrease in salary as a result of a classification determination, they may file an appeal to the Classification Appeal Panel through the Employee Relations Division. This also must be done within 15 work-days of notification.

Flow Charts describing the classification request processes are on the following pages.

Job Classification Process Flow Chart

Management Requests

Chapter 7 of Personnel Rules or Article 19 of NAPE/AFSCME Labor Contract

When significant changes in duties and/or responsibilities are made to a position, or when a new position is created, the agency head shall submit a current Position Description Questionnaire (PDQ) or a Comprehensive Position Questionnaire (CPQ) to State Personnel for classification review (Chapter 7, section 004 State Personnel Rules).

The Employer (agencies) agrees to classify/reclassify positions...with the end result being that all classifications/reclassifications shall be in balance with the classification for similar work being performed by other state employees (19.1 NAPE/AFSCME contract).

A PDQ should be used when the request is to reclassify a specific position or create a new position in an existing classification.
A CPQ should be used for requests to create a new class or to change the pay line of a position.

The Supervisor or employee shall complete the PDQ/CPQ and it shall be signed by both parties.

Agency submits PDQ/CPQ to State Personnel along with a statement of the agency's position on the request.

State Personnel begins review process.

State Personnel contacts the State Budget Office to verify that adequate PSL exists to support the request if the request is to upgrade a position or create a new position.

Based on the nature of the request, State Personnel gathers and reviews information, and performs analysis, which may include the following actions, not necessarily in this order:

- Reviews submitted PDQ/CPQ
- Interviews Incumbent
- Interviews Supervisor
- Reviews Organizational charts
- Review comparably classed positions
- Review possible classifications, class specification, and guidelines
- Interviews other agency personnel
- Interviews subject matter experts when necessary
- Contact other agencies or other states to gather information about similar positions
- Review agency job descriptions
- Review other information State Personnel deems necessary or helpful to make a determination

If a new class is created, or a job specification requires updating, State Personnel develops/updates the specification, and requests agency management to review and provide feedback.

State Personnel may meet with agency to discuss preliminary findings prior to issuing determination.
Once all information is gathered and analyzed, State Personnel issues a final determination, in writing to agency contact.

Agency is responsible to notify employee of State Personnel's determination per internal agency process.

Agency must implement determination during the current pay period of the decision, or no later than the beginning of the next pay period unless the employee files an appeal or requests a reconsideration. If an appeal or reconsideration is requested, the decision is delayed pending outcomes.

The Classification Appeal Process and Reconsideration Process are on subsequent charts.

Job Classification Process Flow Chart

Contract Covered Employee Request

Sections 19.1-19.12 of the NAPE/AFSCME Labor Contract



Job Classification Process Flow Chart

Classification Appeal

Section 19.7-19.11 of the NAPE/AFSCME Labor Contract

If an employee experiences a reduction in salary as a result of the classification determination, the employee may file an appeal to the Classification Appeal Panel within 15 work days of notification of the determination.

The employee must submit a letter to Employee Relations requesting an appeal within 15 workdays of notification of decision.

Employee Relations sends appeal forms to employee, and to Personnel Analyst who conducted the review to complete and return within the specified timeframe.

Employee Relations schedules a hearing with the Classification Appeal Panel, and sends the panel all information at least 10 days prior to the hearing.

Hearing is held following rules of procedure established by the Classification Appeal Panel, and the panel makes a recommendation to either support State Personnel's determination, or to grant the employee's request. If recommending to grant the employee's request, the Panel sends the request back to the State Personnel Director for the final decision.

The State Personnel Director issues the final determination which is binding.

The agency must implement the determination. Implementation of upward classification changes as a result of an appeal and the State Personnel Director's final determination are effective the first day of the next full pay cycle following the final determination.

Job Classification Process Flow Chart

Rules Covered Employee Request

Chapter 7 of Classified System Personnel Rules



**Job Classification
Reconsideration Process
Rules Covered Employees-Chapter 7, Section 009**

Employees or agencies can request a reconsideration of State Personnel's determination within 15 work days of receipt of determination.

Request for reconsideration must be in writing and include in detail reasons for the request, why the decision was inappropriate, the specific reasons therefore, and a statement of the classification sought.

Agency forwards reconsideration request to State Personnel.

Director of State Personnel will assign a second Personnel Analyst to review the reconsideration request.

The second Personnel Analyst will conduct a thorough review of the analysis conducted by the original analyst which may include many of the same steps previously completed. The second Personnel Analyst will present a recommendation to the State Personnel Director.

The State Personnel Director will ensure that:

- 1) proper application of the State's classification methodology was utilized in the decision making process
- 2) issues raised by the employee were taken into consideration
- 3) information used in the decision making process was accurate and correct
- 4) the review is limited to issues raised by the appellant in the initial request for reconsideration and no new evidence is allowed.

State Personnel issues a final and binding determination.

Classification Methodology

When State Personnel receives any request to reclassify or classify a newly established position, a methodology is followed, to ensure consistent classification actions. The reclassification methodology State Personnel engages in is similar for all reviews. The methodology encompasses gathering verbal and written information about the position under review. State Personnel conducts research to perform a thorough analysis of the position.

Several factors determine the depth of the methodology utilized by State Personnel. The level of analysis is determined by: a) commonality or uniqueness of the class requested within the classified system, b) whether the position is vacant or occupied, c) whether or not the request is to create a new class or to change a salary pay line, d) the duties assigned to the employee, and e) the quality of the submitted PDQ.

Based on the nature of the classification request, State Personnel may do the following, not necessarily in order:

- Review submitted PDQ(s)
- Review job specifications and guidelines
- Review comparably classed positions within the agency and within the State's Classified System
- Interview incumbent
- Interview Supervisors
- Interview other agency personnel
- Review agency organizational charts
- Interview subject matter experts
- Review agency data that may identify primary duties, such as performance reports (State Personnel requests that agencies delete or black out actual performance ratings, as actual employee performance is not considered)
- May research other state government job classifications for similar work
- Reviews other information State Personnel deems necessary or helpful to make a determination, such as examples of an employee's work (for substance, not quality), or internal agency policies and/or procedures.

Job Factors

It is important for employees and agencies to have a full understanding of what factors are considered when a position is reviewed for classification. Equally important are the factors that are not considered for classification. These factors are listed below.

Factors Considered

- ✓ Knowledge, skills and abilities required of position
- ✓ Kind or nature of work performed
- ✓ Complexity of work performed
- ✓ Level of supervision received and/or exercised
- ✓ Level, scope and impact of decision making exercised
- ✓ Scope/breadth of work and responsibility
- ✓ Impact of error
- ✓ Level and purpose of contacts
- ✓ Level of independence, judgment and discretion exercised
- ✓ Level of resource management (human, financial, space, facilities, information, and/or materials)

Factors NOT Considered

- ✓ Performance of individual
- ✓ Quality or quantity of work performed
- ✓ Longevity-employee's tenure
- ✓ Potential of the employee
- ✓ Future work not yet being performed
- ✓ Need for retention of the employee
- ✓ Comparisons to positions outside the classified system
- ✓ Employees financial need
- ✓ Recruiting issues

Classification Timelines

The NAPE/AFSCME labor contract requires that contract covered employee classification requests be completed within 45 work days. Generally, State Personnel uses this timeframe as the maximum time allowed to complete classification reviews.

However, the nature and circumstances of the request may provide for a faster turnaround time. As requests are received, State Personnel usually prioritizes them in this general order:

- 1) **Employee requests**—As mentioned earlier, these should be completed within the 45 work-day timeframe. Weekend days and holidays do not count as work-days.



- 2) **Vacant position requests**—Because agencies normally desire vacant positions to be classified quickly in order to advertise and recruit for these positions, these requests are considered to be a high priority for State Personnel to complete. State Personnel strives to classify requests of vacant positions into an existing class within 20 work-days provided adequate documentation is received by our office and audits are able to be scheduled in a timely manner. Requests to reclassify a vacant position into a new classification may take up to 45 work-days. Should State Personnel require additional time due to unforeseen circumstances, the agency will be consulted to determine a newly agreed upon completion date.
- 3) **Management requests**—Although State Personnel strives to complete management requests within the 45 work- day timeframe, employee requests and vacant position reviews are considered a higher priority. However, in most cases 45 work days is the maximum timeframe needed to complete management requests provided the necessary documentation and requested information is received by our office and audits are able to be scheduled in a timely manner. As with requests to reclassify vacant positions, should State Personnel require additional time due to unforeseen circumstances, the agency will be consulted to determine a newly agreed upon completion date.
- 4) **Expedited requests**—State Personnel does provide for some classification requests to be completed in an expedited manner. This process is geared towards highly populated, agency specific classifications. Expedited classification requests can usually be completed within a few days time. The process to request expedited reclassifications is explained later within the guide.

While it is State Personnel’s intent to classify positions in an expedient manner, some factors can extend the timeframe needed to complete the classification process. For example, when the agency requests that State Personnel create a new class, the timeframe is usually longer. This is because the extra step of creating a class specification is involved. Also, requests that require changes made to an existing class specification add time to the process.

Occasionally, State Personnel may conduct a classification review that spans across multiple agencies. These types of reviews typically extend beyond the desired 45 work-days because of the need to coordinate and communicate with all parties involved.

Also, State Personnel may conduct a review that involves multiple incumbents. More incumbents involved in a review requires more time to complete the review.

The research and analysis phase of classification can also be extended if State Personnel is unable to obtain the information requested of agencies, supervisors, or incumbents in a timely manner. This phase often requires clarification or submission of additional documents from the agency, whose timeline may not be as urgent as ours.

Typically, the Personnel Analysts are working a case-load that encompasses numerous agencies and requests that are in various stages of the classification process. The Personnel Analysts also review and provide recommendations on requested salary actions. Certain salary actions, such as requests to hire new employees at an advanced hiring rate (above-hire request), or a retention in-grade request take precedence over other classification and compensation work. This is because we want to ensure agencies do not lose applicants due to not being able to provide a swift response.

Expedited Classification Process

As mentioned earlier, State Personnel has an expedited classification process available under certain circumstances. As a service to our agencies, State Personnel created the expedited classification process to accelerate the process of reclassifying highly populated or agency unique classifications typically resulting in approval of the agency's request.

Obtaining Approval:

To participate in the expedited classification process, an agency should submit a request to the Director of State Personnel listing the specific classifications to be approved through the expedited process. Classifications eligible for placement on the expedited list must meet one or more of the following criteria:

- Highly populated classification (minimum of 25 established positions within the agency)
- Classifications unique to the agency.

Upon receipt of the agency's request for participation in the expedited process, State Personnel will review the identified classes, compare the classes to the above-mentioned criteria and send a formal response to the agency indicating approval of classes for the expedited list.

Once a class has been approved for placement on the expedited list, the agency is responsible for completing a "master" Position Description Questionnaire (or equivalent). This "master" copy is retained in State Personnel and is utilized during the expedited classification review process.

Expedited Classification Steps

An expedited classification request may be submitted to either create or reclassify a vacant or filled position to an approved expedited class.

To request a reclassification through this process, an agency will send an e-mail notice to their assigned Personnel Analyst(s). This e-mail request must include the following:

- Position number(s) of the position(s) being requested for reclassification
- A request statement to create or reclassify the identified position(s) to a specific class on the expedited list. For Example: "This is a management request to reclassify a vacant Potato Peeler (ABC class code), position #12-34567, to the Potato Dicer (XYZ class code) class."
- A statement that indicates the requested position will function in a similar capacity as other positions allocated to the requested classification. For Example: "The position's essential tasks and responsibilities are similar to other positions in the class within the agency."

Upon receipt of all necessary information, State Personnel will review the agency's expedited classification request. A response is submitted electronically (via e-mail) to the agency's Human Resources contact approving or denying the request. Because previous steps have been taken to identify expedited classifications, requests under this process are less time-consuming and, as such, are completed expeditiously.

It should be noted that an expedited reclassification action does not change the budget approval process or an agency's internal classification/compensation review process. Any requested reclassifications must be made within existing agency Personnel Service Limitations.

Salary Grade Definition

Positions used to be classified into a job classification and assigned to a salary grade. Because of the implementation of market-based pay increases as a result of the 2007 CIR ruling, the traditional use of salary grades no longer exists. Positions are still classified; however each individual job classification is now assigned a pay line.

The current labor contract no longer uses the term "salary grade," nor utilizes salary grades in relation to personnel actions.

However, this term is still utilized in the Classified System Personnel Rules in a number of chapters. Therefore, it is necessary to define this term for Rules covered employees only. The 2009 published pay plan redefines the meaning of a salary grade for Rules covered employees. A spreadsheet and a key has been provided to agencies to calculate the percentage of difference found between individual classes. The new definition of the term salary grade when movement between job classifications occurs follows:

- A difference of +/-4.999% between the hiring rates of the two job classifications is considered a lateral transfer

- A difference of +/- 5%-9.999% between the hiring rates of the two job classifications is considered one salary grade
- A difference of +/- 10%-14.999% between the hiring rates of the two job classifications is considered two salary grades
- A difference of +/- 15% or more between the hiring rates of the two job classifications is considered three salary grades

This methodology should be used to calculate new salaries, or to determine whether or not any movement between classifications signifies a change in salary grade for purposes of reclassifications, promotions, demotions and/or bumping options should a lay-off occur.

It is also important to note that when movement between job classifications occur, Rules covered employees must be paid at least the minimum permanent rate of his/her new classification. Also, an employee placed in a higher pay line cannot be paid above the maximum rate of his/her new classification as a result of a promotion.

Salary Administration

Purpose

Chapter 8 of the Classified System Personnel Rules allow for in-grade and above hire salary adjustments to be reviewed and approved by the Director of State Personnel. The purpose of this review is to provide consistency and equitable salary administration throughout the classified system. The following information pertains only to Rules covered employee salary adjustment requests.

In-Grade Salary Adjustments

The current Personnel Rules allow in-grade salary adjustments for the following reasons:

- If the agency discovers that there is an existing internal pay equity issue for similar jobs (classes).
- If the agency is taking an action to hire an individual above the hiring rate; and that action would create an equity issue for current, equally qualified staff.
- If a single position has unique responsibility/skill requirements which significantly distinguish it from others within the class.

- Retention issues (i.e., high turnover, market issues).
- Increased workload that is considerable yet does not warrant reclassification (i.e., lead worker responsibilities).

The two most common, and most misunderstood, requests received by State Personnel include any request regarding equity, and secondly, increased workload. Below are some criteria State Personnel assesses prior to making a determination.

Equity

Inequity exists when individuals within a single agency that have similar qualifications, experience and length of service have a wide gap in pay, typically over 2.5%. Credentials, education, job related experience, length of service, time and grade of current and previous classifications within state government, kind and/or combination of skills should all be compared for the individuals involved to assess whether or not an inequitable situation exists. The mere fact that two (or more) people within the same class are paid differently, by itself, does not necessarily mean that an equity concern exists. The above listed factors are legitimate reasons why pay differences among individuals may exist.

Increased Workload

Increased workload requests are those when the agency desires to grant a pay increase because the additional work assigned is of an increased scope, complexity and broader impact than previously assigned work, yet the additional work is not enough to reclassify the position. More of the same type of work with the same scope and impact does not merit a pay adjustment. Typically, an employee is assigned lead worker duties over three or more individuals, or assumes much greater responsibility for work that may be at the same classification level, but is over and beyond the typical workload. For example, if a program manager manages two programs, and is assigned a third, this may be an increased workload. However, if a manager is assigned a third program and the total workload of that individual compares similarly to others within the class, then an adjustment would not be merited.

A rule of thumb State Personnel follows is that “more of the same” is not enough to justify an increase. For example, if one potato peeler peels 15 potatoes a day, and the other peels 20, that is not enough to justify an increase. If however, the 2nd potato peeler also cooks the potatoes, then an increased workload may exist, due to an expanded scope. The added workload typically is significantly different in nature than the current classification, requires a different skill set, certification, or training, and usually relates to work not envisioned in the class specification. The scope and complexity of the added workload is also considered, in addition to the time spent on the added duties, which should be 20-25% of the time in order to justify the increase.

Increase Amount

Questions often arise about what percentage of an increase is reasonable. When analyzing increased workload requests, State Personnel's philosophy has been that there is a 7.5% historic difference between each "pay grade." Therefore, when looking at how much of an increase is reasonable, and that the increase in workload is not enough to warrant a reclassification into a

higher classification, in most scenarios, typically, the increases range from 2.5% to 5%. If the added work is of higher level, and performed a significant amount of time, than a reclassification is usually a more appropriate action.

This same philosophy is applied to requests regarding a unique skill/responsibility.

Approval for requests regarding pay equity and retention will vary, based on the situation and what is needed to correct the inequity, or what it will take to retain the employee.

Informed Decision

Given that each situation has a different set of variables involved, State Personnel makes informed decisions based on the assessment of all the facts involved.

Factors Not Considered

Similar to classification, there are factors which are **NOT** considered when weighing salary adjustment or above-hire requests. These factors include the following:

- Quality of the employee's performance
- Employee's financial need
- Assignment of future projects or work; only current work is considered
- An employee's potential to excel in the job
- Cost savings to the agency is not a factor

Contract Covered positions

When above hire and in-grade salary adjustments are received for labor contract covered positions, State Personnel coordinates with Employee Relations who, in turn, seeks concurrence with NAPE /AFSCME, as required by the NAPE contract. Agency requests for NAPE contract covered positions should include similar salary adjustments for incumbent employees possessing the same job qualifications or unique job related factors. NAPE has one and one-half work days to respond to such requests.

Reduction-In-Force: Furloughs & Lay-off

Agencies are sometimes faced with the decision to reduce the workforce due to financial considerations. Two options available are furlough, and layoff. Agencies must be mindful that the process to furlough or layoff Rules covered and contract covered employees may be different. This guide can assist agencies with maneuvering through these processes.

Furlough

Furlough is defined as the placement of an employee in a temporary non-duty, non-pay status because of lack of funds. An intermittent furlough is a furlough action in which the non-duty, non-pay status occurs discontinuously over a period of time (e.g., one work day per month for a six-month period) rather than consecutively.

This guide will take you through several critical decision-making questions to assist your agency in determining whether or not to implement a furlough. Every agency experiencing a reduction in funds or work will have unique business factors relating to their particular agency. The mission of the agency and specific funding or workload situation will often dictate whether a furlough is appropriate.

The goal of implementing a furlough is to provide State agencies with a tool that provides for continuation of critical work within the agency and retention of valuable human resources.

Each agency head is responsible for determining when a furlough would be beneficial and developing the furlough plan. The Employee Relations Division will make recommendations for plan approval to the Governor for contract covered employees, and the Director of State Personnel will make recommendations for plan approval to the Administrative Services Director for Rules covered employees.

Questions the agency should consider include:

- 1) How long will the situation last? Is this a temporary short-term situation versus long-term?
- 2) Is the funding decline part of the normal budget process or is this a unique situation such as a reduction in grant or federal funds?
- 3) Are the affected employees Labor Contract or State Personnel Rules covered?

Decision Making Factors:

When determining whether a furlough is appropriate, the agency should consider several issues:

- If funding is reduced in a program or work unit and the agency believes the source will be restored within the foreseeable future; or if another action such as a pending retirement, resignation or transfer will resolve the funding shortfall, a furlough may be an appropriate option in lieu of layoff.
- If funding is eliminated for a work unit/program area and there is still a critical need to continue a portion or all of the work, an agency may consider shifting PSL from another program area to retain all or a portion of a position. A furlough may be implemented in this situation to retain workers in a critical area.
- If an agency does not expect a funding reduction to be restored in the next budget cycle and the agency does not have the ability to reorganize work, a layoff may be the appropriate option.
- When a work unit or agency incurs a significant unexpected expense or an emergency situation exists for which they have not budgeted nor can obtain deficit funding, a furlough may be appropriate if a date is known when funding will be restored to previous levels.

Determining Who to Furlough

Another difficult decision agencies can be faced with related to implementing a furlough action is determining which employees should be subject to the furlough. Listed below are some criteria that should be considered while making those determinations:

- Employees who have special skills or are considered “essential to mission” may be excluded from participation in furloughs. Mission essential employees should be identified early in the process to avoid the appearance of preferential treatment.
- If time and circumstances allow, agencies may wish to consider implementing voluntary furloughs prior to implementing an involuntary furlough. Employees from other non-affected work areas may volunteer and be selected for furlough if the furlough will result in a savings that offsets the funding shortfall.
- Uniform selection criteria should be developed by the agency and consistently applied. The agency must first consult the appropriate labor contract (Article 5.15 for NAPE covered employees) or the State Personnel Rules (Chapter 13) to determine which employees will be affected by the furlough. Different rules and criteria pertain.

- Supervisory and management employees should not necessarily be excluded from the furlough requirement unless there are business-related factors preventing their participation.
- Furlough shall not be used as a substitute for permanent part-time employment.

Steps for Furlough Plan Approval

Each plan should include a cover letter requesting review and approval of the furlough plan addressed to either the Employee Relations Administrator/Chief Negotiator (for furloughs involving NAPE Labor Contract covered employees) or the Director of State Personnel (for State Personnel Rules covered employees). The letter should include the following:

- Explanation of the reasons for the furlough (budget shortfall, decrease in federal or grant funds, etc.). The explanation should also include facts related to the temporary nature of the event causing the furlough action.
- A summary of the budgetary analysis conducted by the agency and how the furlough action will relieve budgetary shortfalls, if applicable. The summary should also include an explanation of how the specific funding deficit relates to the affected work areas.
- The effective date of the furlough, and the expected length of the furlough.

Plan Requirements

- 1) The plan should begin with an explanation of how employees will be selected. If time and circumstances allow, agencies are encouraged to seek volunteers for voluntary furlough prior to implementing an involuntary furlough. Agencies should indicate in their plan whether they intend to seek volunteers prior to implementing a voluntary furlough.
- 2) The tentative schedule for the furlough and number of employees affected should be pre-established in the plan. As an example, the furlough schedule for six employees in a work unit may be one day a week for a period of six weeks. The actual days off for voluntary and involuntary furlough should be determined with as much employee input and flexibility as possible without compromising the mission of the work unit. Selection of employees subject to furlough and the method of implementing the furlough must be in compliance with the applicable labor contract or State Personnel Rules.
- 3) The plan should include the effective date of the furlough. Employees should be given as much advance notice as possible when implementing an involuntary furlough. A minimum of 5 work-days notice is sufficient to affected employees unless unusual circumstances exist

where a shorter notice period is required. The plan should include the date when employees will be notified.

- 4) The plan should specify whether labor contract or Rules covered employees are affected and their job classifications.
- 5) A seniority list (seniority within classification in affected work area) of affected employees must be provided for labor contract employees.
- 6) The duration of the furlough should be stated in the furlough plan. Generally, furloughs should not be extended beyond a six-month period for Rules covered employees, although there may be exceptions. Furloughs should not be used as a long-term solution. There is no provision in the NAPE/AFSCME labor contract for extending furloughs, although the agency could do a new furlough covering the same employees.
- 7) The plan should include a draft letter to employees designated for involuntary furlough. The letter should include an explanation of the reason and duration of the furlough. The letter should include the following:
 - a. An explanation of the reasons (budget shortfall, decrease in federal or grant funds, etc.) for the furlough. The explanation should also include facts related to the temporary nature of the event causing the furlough action.
 - b. The letter should include a summary of the budgetary analysis conducted by the agency and how the furlough action will relieve budgetary shortfalls, if applicable. The summary should also include an explanation of how the specific funding deficit relates to the affected work areas.
 - c. The letter should include the effective date of the furlough, and the expected length of the furlough.

Furlough FAQ's

- 1) **If an employee works overtime during a week in which a furlough has been designated, will they receive overtime compensation?** Time not worked during a furlough will not be counted as work time for purposes of computing overtime.
- 2) **Will an employee's service anniversary date be adjusted for a furlough?** Under the NAPE/AFSCME Labor Contract, a furlough does not constitute a break in continuous service;

therefore, an employee's service date will not be adjusted. Under the authority of Nebraska Revised Statute 81-1317, a memo issued in July of 2008 by Mike McCrory, Director of State Personnel, provides the same for Rules covered employees.

- 3) **What will happen to an employee's health and life insurance while on furlough?** The state will continue to make the same premium contribution toward health and basic life insurance coverage during a period of furlough as though it was a period of paid work time for NAPE/AFSCME employees. Also, furloughs will not affect health or basic life insurance for these employees. Under the authority of Nebraska Revised Statute 81-1317, a memo issued in July of 2008 by Mike McCrory, Director of State Personnel, provides the same for Rules covered employees.
- 4) **Will an employee's leave accrual rates change during furlough?** A furlough does not impact leave accrual rates for NAPE/AFSCME covered employees. Under the authority of Nebraska Revised Statute 81-1317, a memo issued in July of 2008 by Mike McCrory, Director of State Personnel, provides the same for Rules covered employees.
- 5) **How will furloughs in a work unit impact employees on Family and Medical Leave?** If an employee is on unpaid FMLA, there is no need to apply a furlough action.
- 6) **Can an employee be on furlough and still be on-call or on stand-by?** Employees on furlough shall not be scheduled for stand-by or on-call duty.
- 7) **Can employees on paid military leave be scheduled for furlough?** Employees should not be scheduled for furlough during periods of paid military leave. Employees may be scheduled for furlough upon return to work.
- 8) **If an employee is already in an unpaid status at the time they are designated for furlough, will they have to take a later furlough date when they return to work?** If an employee is already in an unpaid leave status at the time they are designated for furlough, they will not have to take an alternative furlough date unless the furlough action for the work unit is extended beyond their return date.
- 9) **If an employee's retirement contributions are reduced because they are in an unpaid status, can the employee make up retirement contributions?** The current statutes do not allow employees to "make up" contributions.
- 10) **Can an employee substitute paid leave (vacation, sick or compensatory time) for a period of furlough?** An employee may not substitute paid leave for a period of furlough.

- 11) Can an employee request or an agency designate furlough days before or after a designated paid holiday?** Yes, furlough dates may be established before or after a designated paid holiday without the loss of holiday pay for the furloughed employee.
- 12) Can employee be allowed to take a voluntary furlough in lieu of moving to a permanent part-time status?** No. Employees desiring part-time employment on a permanent basis are not eligible for furlough. Generally, furloughs should not be extended beyond a six-month period.

A sample furlough plan is found in Appendix A and the end of this document.

Lay-off Actions

As mentioned previously, when an agency experiences a temporary loss of shortage of funds, a furlough action may be appropriate, as those actions are not permanent. On the other hand, when a permanent loss of funding occurs, or, as a result of reorganization within an agency, a layoff may be considered. Layoff is defined as an involuntary employee separation or reduction of hours because of economic reasons, elimination of funds, reduction in workload, or reorganization of the agency. Layoffs are permanent actions.

Administrative Services, State Personnel Division is responsible to review and approve all layoff policies for all classified agencies regardless of whether the affected employees are Rules or labor contract covered. Additionally, State Personnel is responsible to review and approve all layoff plans which include Rules covered employees prior to implementation by an agency. The review includes ensuring the policies and plans are in compliance with the State Personnel Rules. This review can normally be completed within a week's time.

All lay-off plans involving labor contract covered employees are reviewed by Employee Relations. The approval of an agency's layoff policy by State Personnel for contract covered employees should not be confused with the approval of an agency's layoff plan for contract covered employees. A layoff plan involving labor contract covered employees shall be submitted to, and reviewed by, Employee Relations. This guide is designed to assist agencies with developing lay-off policies, and lay-off plans that involve Rules covered employees.

To assist agencies with the process, we have included information, flow charts, and templates within this guide. Determining that a layoff action is necessary is often a difficult decision for agencies, and implementation of a layoff action can be traumatic for employees. Therefore, we encourage agencies to be mindful of the language used within layoff correspondence. To assist in this area, we have provided samples within this document. Agencies are also encouraged to contact your assigned Personnel Analyst should they desire additional assistance.

Layoff Policy

Prior to implementing any layoff action, agencies are required to have a layoff policy (Reduction-in-Force) in place. The purpose of the layoff policy is to communicate to employees the overarching policy of the agency should a layoff occur. The Classified System Personnel Rules allows agencies some latitude in developing lay-off plans, which agencies should consider prior to developing a policy and/or plan.

Even if no layoff action is imminent, agencies are encouraged to develop and obtain approval of a layoff policy to be prepared in the event a layoff action is needed. Essentially, the layoff policy your agency develops will guide you in writing a layoff plan, should one become necessary.

The layoff policy should include the following elements:

- The purpose of the policy.
- Retention Privileges-The State Personnel Rules differ from the labor contract in that agencies can also consider quality of performance, length of service, or other job related factors to determine retention privileges. The labor contract allows agencies to only consider seniority. Your policy should clearly define what factors will be considered to determine this in addition to a developed numerical rating system that uses factors, and assigns points accordingly.

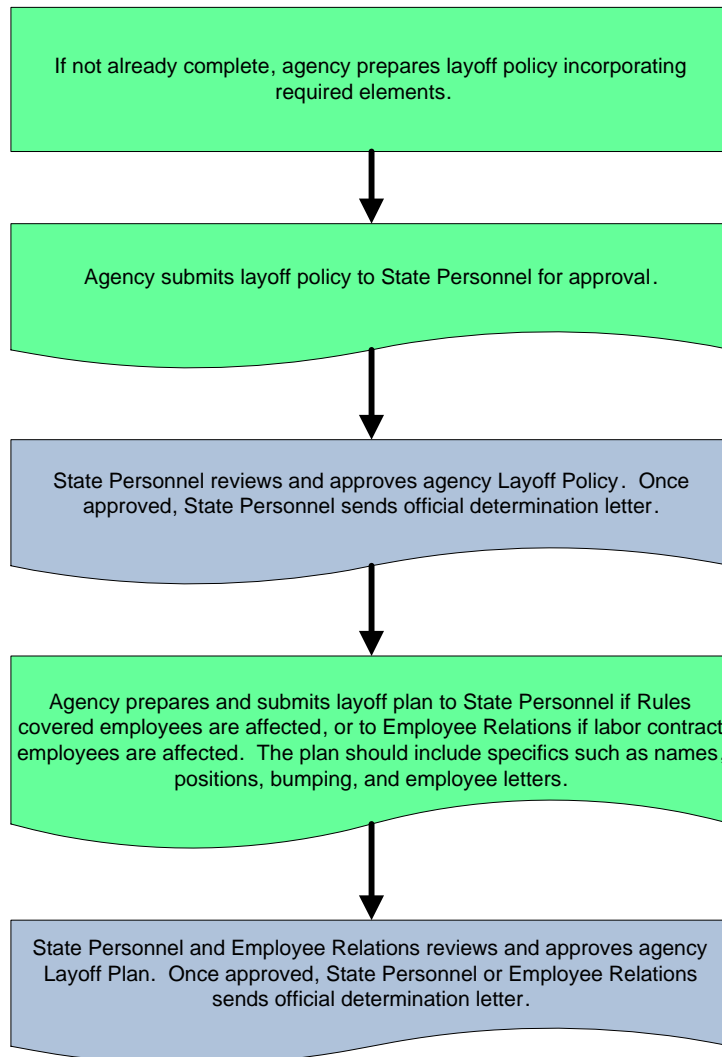
Please take special notice, that in order to use performance as a factor in layoff situations, the agency should have a State Personnel approved performance review system in place that is consistently utilized throughout the agency.

- Bumping Privileges- Agencies should review bumping privileges as allowed by the State Personnel Rules for Rules covered employees, and address the following within the submitted layoff policy:
 - Agency heads shall establish bumping privileges by facility, geographical areas and/or division and/or by total agency. The determination of bumping privileges should be discussed in the layoff policy.
 - Employees hired or voluntarily accepting promotions to G coded classes on or after July 1, 1998 do not have bumping rights
 - Bumping to a higher salary grade¹ is not allowed
 - Bumping rights shall not take place between agencies
- Bumping Sequence- Bumping is allowed in the following sequence, and should be addressed within the agencies layoff policy:
 - Positions of the same class
 - Positions within the same class series of a lower salary grade
 - Classes the employee previously occupied of an equal or lower salary grade and held within the previous 48 months.

¹ See page 28 to determine salary grade movement wherever ever salary grade is referenced herein

A flow chart depicting the layoff policy approval process is found on the following page.

Layoff Policy and Plan Approval Process Flow Chart



A sample layoff policy is found in Appendix B and the end of this document.

Layoff Plan

The layoff plan is different from the policy, in that it is specific to the upcoming layoff action. It will specify positions, employees, reason of the layoff, and the effective date. The layoff plan should follow the agency's previously approved layoff policy. The following information is applicable to a layoff plan for Rules covered employees. Employee Relations will provide sample layoff plans for NAPE/AFSCME covered employees upon request.

The layoff plan should include the following elements:

- 1) Reason for layoff
- 2) Which position(s) are affected, including:
 - a. position number(s)
 - b. position class title(s)
 - c. class code of affected position(s)
 - d. affected incumbent(s) full name
- 3) That the agency is providing a minimum of a 15 workday written notice, which also includes:
 - a. Reason for layoff
 - b. Effective date of layoff
 - c. Agency seniority list, if applicable
 - d. Rights and privileges afforded to laid off employees (bumping)
 - e. Information regarding the re-employment program
- 4) Bumping options
- 5) Recall/Reinstatement options
 - a. Salary impact
 - b. Address probation

Flowchart of Layoff Actions:

Once received, State Personnel will review the layoff plan. Items the agency should ensure are addressed within the layoff plan include the following:

- ✓ 15 workday notice given to employee
- ✓ 3 workdays given to employee to respond to bumping
- ✓ Layoff notices are not allowed to be delivered from December 15-January 3
- ✓ Draft letter notifying employee which includes:
 - Reason for layoff
 - Effective date of layoff
 - Seniority list if applicable (may be attached, in lieu of inserting in the body of the letter, however the letter should refer to this list, if applicable)
 - Bumping rights of the employee (may be attached, in lieu of inserting in the body of the letter, however the letter should refer to these rights)
 - Bumping options
 - Letter is sensitive to the employee being laid off
 - Information concerning the Re-employment pool
 - Information concerning EAP counseling options
- ✓ Bumping list
- ✓ Agency vacancy list
- ✓ Chapter 13 of the State Personnel Rules

A sample layoff plan is found in Appendix C and the end of this document.

Re-Employment Program

The State's re-employment program was originally created as a result of labor negotiations between NAPE/AFSCME and the State of Nebraska. The program was extended to include Rules-covered employees through the Director of State Personnel's authority under statute 81-1317. The program's purpose is to give permanent state employees who have been laid off through no fault of their own priority consideration when a position becomes vacant, and the laid off employee is qualified for the position. Laid off employees are not eligible for priority consideration for positions that are only advertised on an internal basis. Persons laid off from positions that are not covered by the Classified Personnel System (constitutional agencies, at-will or discretionary positions) are ineligible to enroll in the re-employment program.

Priority consideration is defined by the NAPE/AFSCME labor contract as an "offer of employment" when required criteria is met and the employee meets the minimum qualifications of the position. Program members are eligible for priority consideration when the position is at the same or lower minimum rate of pay than the employee's prior position. Program members must also apply for the vacancy within the required timeframe, and must meet the minimum qualifications identified in the job listing.

As indicated previously, when agencies provide employees with lay-off notices, information regarding the re-employment program should be included within the notification letter. Additionally, during the layoff plan approval process, State Personnel-Recruitment unit will provide the agency with a personalized letter to the employee outlining details of the program. This letter should be given to the employee when they are notified of the layoff action.

Laid off employees are eligible to enroll in the program only after the employee's options, if applicable, have been exhausted. These options include transferring to a vacant position within the agency, or exercising bumping rights.

Employees have 30 days from their lay-off date to exercise their right to enroll into the program once laid off. To do this, they must provide a copy of their lay-off notification to State Personnel, complete a state application, and schedule a brief interview with a State Personnel Recruiter. These actions must be taken by the employee to become enrolled and to be considered for positions.

The Recruitment unit monitors agency vacancies. When a vacancy and a program member match, State Personnel contacts the program member to inform them of the opportunity and confirm their interest. The minimum qualifications should be found in the education/experience section of job order forms that agencies complete and submit to State Personnel for advertising and recruitment purposes. State Personnel uses this information to match program members with vacancies.

A State Personnel Recruiter will be assigned to work with program members. Recruiters will contact program members as positions become available. Program members that fail to respond to one or more contacts from State Personnel will be removed from the program via certified mail. If program members decline positions they are offered, they will no longer be eligible to participate in the program also.

In the event that more than one laid off employee in the Re-Employment Program is eligible for priority consideration, those qualified shall participate in the agency's interview process, and the candidate with the highest score shall be offered the position.

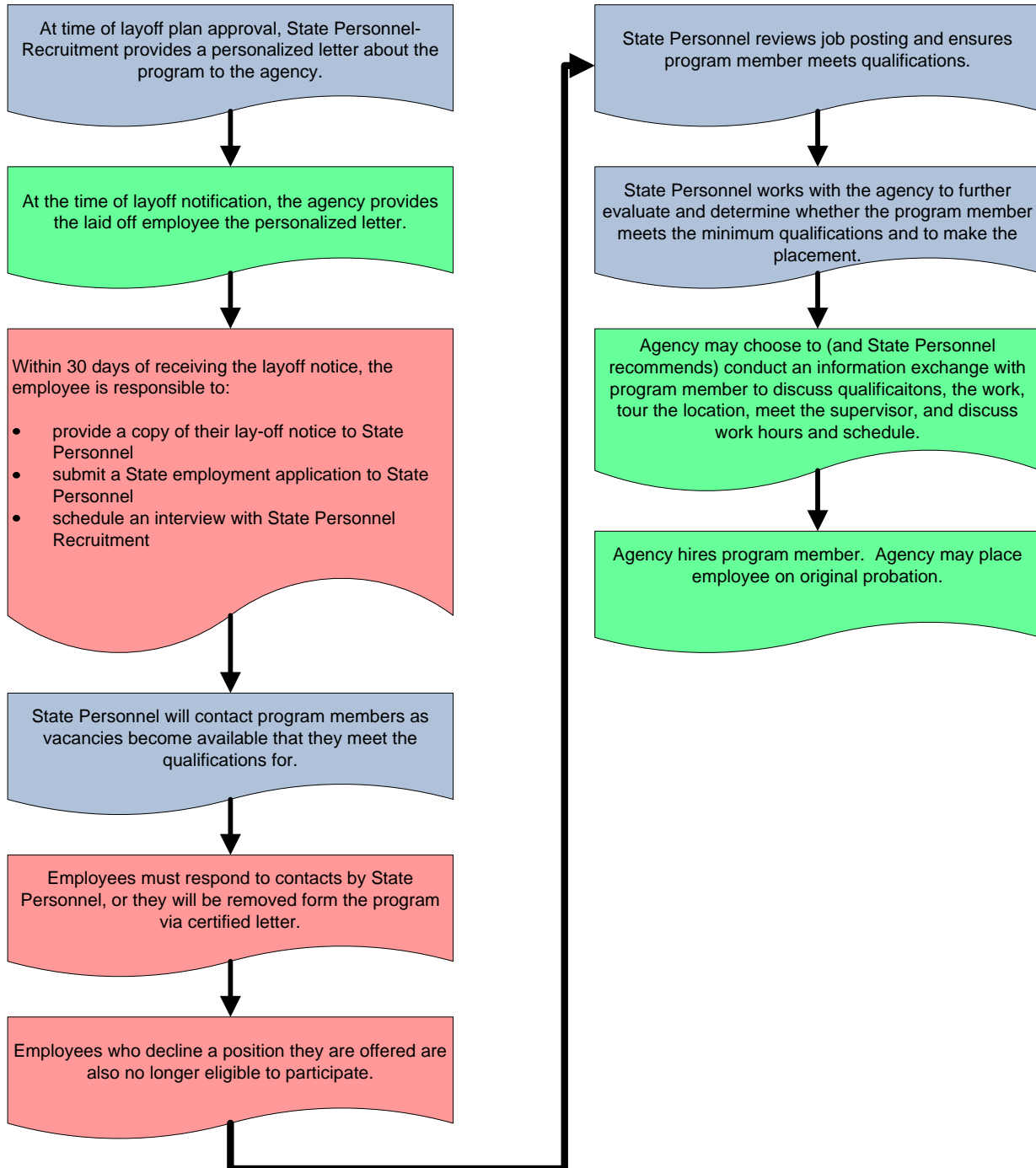
Agencies may place hired program members on original probation at the agency's head discretion. Members who do not complete the original probation will be allowed to re-enroll in the program one more time, and must communicate their intent to re-enroll, and complete a new state application within 30 calendar days of their last day of employment. Should the program member fail to complete the required original probation a second time, they will be removed from the program.

Program members who accept either a full-time or part-time permanent position within Nebraska State Government, either on their own, or through the program, are no longer eligible to continue.

Documented employment information from a current or former employee's personnel file shall be shared with other State agency human resources staff or hiring supervisors.

A flow chart depicting the re-employment process is on the following page.

Re-Employment Program Process Flow



Temporary Employment

State Personnel's Specialized Office Services (SOS) program serves several functions. First, State Statute 81-1307-6(b) establishes State Personnel as a clearinghouse for all State temporary employment. As a result, all classified state agencies must receive approval from the Director of State Personnel before hiring any temporary employees. The SOS program is responsible to facilitate this process. Secondly, this statute establishes the Temporary Employee Pool administered by the SOS program.

The same statute also charges the Director of Personnel to be responsible for the development of recommendations on personnel policy and for the development of specific administrative systems and assigns the Director of State Personnel the authority to adopt, promulgate, and enforce rules and regulations relating to employment, including temporary employment, which are found in Chapter 5 of the Classified System Personnel Rules.

Temporary employees may be full-time or part-time and will fall into one of the following categories:

- Assignment of less than six months
- Assignment from six to twelve months (or 2080 hours annually)
- Assignment to a grant funded position or special project

No temporary assignment shall extend beyond one year, or 2080 hours, without approval from the Director of State Personnel. State Personnel does monitor the length of service of temporary employees. If a temporary employee completes an assignment, they can return to the same assignment (position, agency, and doing the same work as before) after a 30-calendar day break in service.

Prior to hiring temporary employees, agencies should conduct an internal evaluation to assess whether or not other staff members are available to perform the work. Agencies should also determine whether there is a need for a true short-term temporary position. Finally, agencies should determine that adequate funding exists to support use of temporary employees.

Temporary Hiring Options

Agencies that need temporary employees have three options to choose from. With State Personnel's approval, agencies can hire temporary employees to be placed on the agency's own payroll, provided the agency has an FTE available for each position. Secondly, agencies can use the SOS program. The SOS program is an in-house staffing service that provides temporary employees at a lower cost than a private staffing agency. Temporary employees hired through the SOS

program are State Personnel's employees. The SOS program pays the employee and bills the agency for the service. The last option is to utilize a pre-approved private staffing agency. This option can only be utilized through the SOS program.

Job Orders

Once a need to hire a temporary employee has been identified, the agency must complete a temporary employment job order regardless of the option chosen. The job order serves as the official request for permission to hire the temporary employee. State Personnel reviews the job order to ensure appropriate classification, completeness of the form, and proper placement option. These forms can be found on our website at: <http://www.das.state.ne.us/personnel/sos/sos.htm>

Recruitment

Depending on the hiring option chosen, the State Personnel Recruitment unit is available to assist agencies with the recruitment process. Assistance may include, but is not limited to, referrals, listing positions on the job mart, and a variety of print or website advertising options.

Screening

The SOS program conducts a variety of screening methods prior to hiring candidates into the SOS temporary program. A formal interview and reference and background checks are conducted on all candidates. Other assessments such as timed alpha/numeric data entry and typing tests are conducted to assess the skill level of applicants.

Rehiring former employees

Per statute 84-1301, permanent employees who have left state employment must have a 120 day break in service otherwise the employee will continue to be covered by the retirement program. Temporary employees are not eligible for retirement benefits; therefore, a 120 day break in service is required before former permanent employees are eligible to return to state employment in a temporary (agency temporary or SOS temporary) capacity.

Temporary Employee Leave and Benefits

Temporary employees (except those hired through a private sector vendor or employment agency) may be eligible for certain benefits. To be eligible, the temporary employee must be assigned to work a temporary position for six months, or who have worked a combination of consecutive assignments totaling six months, and works a minimum of 20 hours per week. The benefits include medical, dental, and long-term disability insurance. If a break in service of ten workdays or more occurs, the temporary employee becomes eligible for continued coverage under COBRA for a period of 18 months and must re-qualify for the insurance program.

All employees, whether temporary, full-time or part-time are eligible for the deferred compensation program.

Temporary employees also shall receive injury, civil and military training or emergency duty leave. Temporary employees are not eligible for sick leave, vacation leave, state funded retirement contributions, or holiday pay.

Multiple Hires/Blanket Approvals

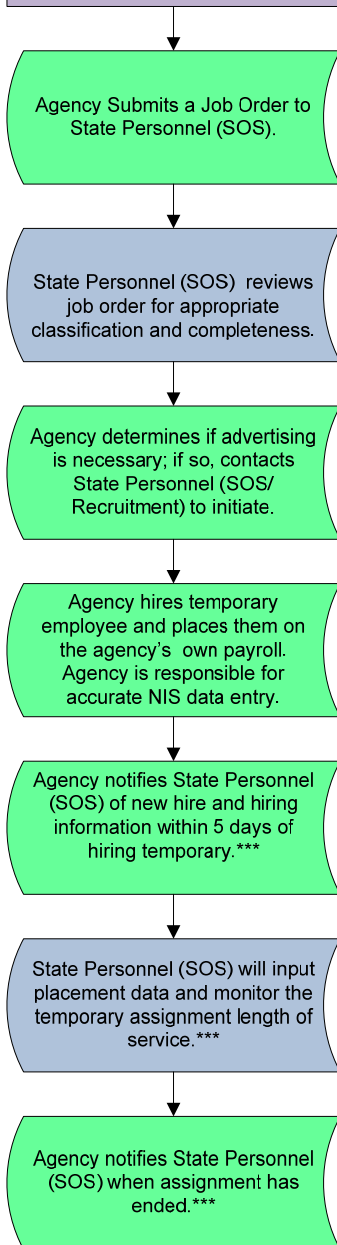
Some agencies may have a need to hire multiple temporary employees during peak seasonal times. In these circumstances, agencies must submit a temporary employment job order requesting blanket approval to State Personnel each year. A separate job order is needed for each job classification with the number of employees estimated to be hired. If the agency desires to pay a different rate than what the classification allows, then the agency can request permission from the Director of State Personnel which should include justification for a higher rate of pay. Rules regarding temporary employment still apply for multiple hires/blanket approvals and can be found in Chapter 5 of the Classified System Personnel Rules.

Temporary Hiring Process

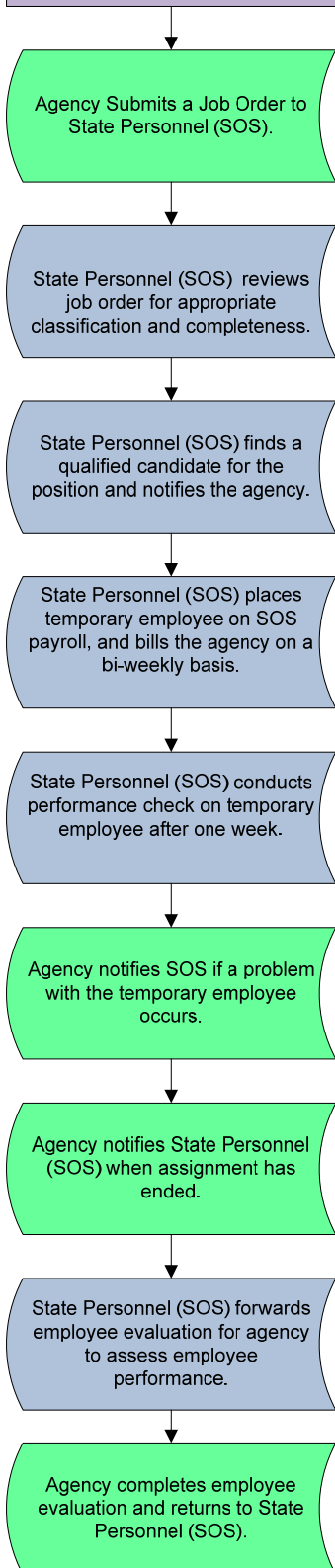
The type of temporary being hired will determine which process agencies shall follow. To assist agencies through the options, SOS Program, Agency Temporary, and Private Sector Staffing Agency, process flow charts are provided on the following page.

Flow charts depicting the temporary employment processes are on the following page.

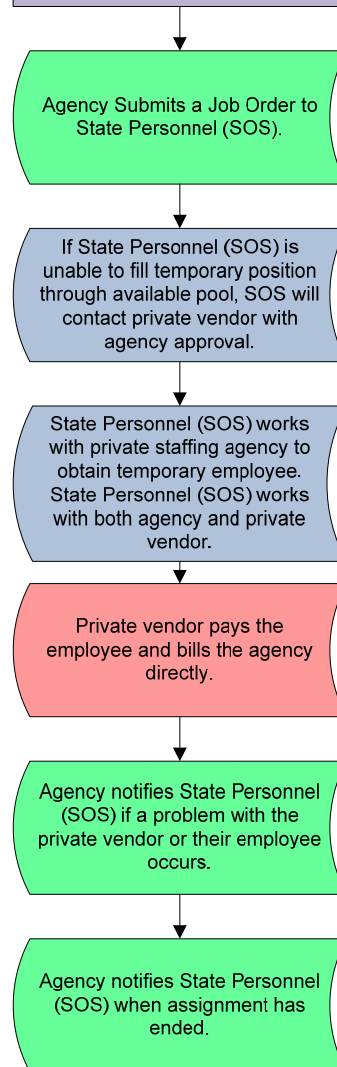
Agency Temporary Process Flow Chart



SOS Temporary Process Flow Chart



Private Vendor Temporary Process Flow Chart



***This step excluded for Multiple Hires/Blanket Approval process.



FLSA

The Classification and Compensation unit is also responsible to stay abreast of and interpret FLSA (Fair Labor Standards Act) issues. The FLSA is a broad and complex federal law that covers many employers, including public and private. The FLSA establishes minimum wage, overtime pay, recordkeeping, and youth employment standards. Besides offering information via the State Personnel Division's classification and compensation website, State Personnel offers general assistance to agencies that may have questions regarding FLSA and other employment laws. The most common questions revolve around overtime calculations, Exempt/Non-Exempt status, and recordkeeping requirements.

Hours Worked

Hours worked includes all time during which an employee is required to be on the employer's premises, on duty, or at a prescribed workplace.

Minimum Wage

Federal law (FLSA) requires that all workers earn at least the minimum wage. Changes have been made recently to the federal minimum wage. Effective July 24, 2008, the minimum wage increased to \$6.55/HR. On July 24, 2009, the minimum wage increased to \$7.25/HR.

The Classification and Compensation unit establishes pay plans. Very few classes are paid at the minimum wage, however, a few temporary positions are. State Personnel will update the pay plans as necessary to comply with federal minimum wage requirements.

Youth Employment

Many special labor laws exist for employers that employ persons under age 16. These rules address work hours and equipment usage allowed by minors under the age of 16. Violations of these rules can result in severe monetary sanctions for employers. It is because of these rules, State Personnel does not recommend that agencies employ youth under the age of 16.

Overtime Considerations

Overtime: Generally, non-exempt employees must receive overtime pay for hours worked in excess of 40 in a workweek at a rate not less than one and one-half their regular rate of pay. There is no limit under the FLSA on the number of hours employees aged 16 and older may work in any workweek.

Regular Rate: Properly calculating overtime includes more than just time and one half the employee's hourly rate. The FLSA requires that overtime be paid on the "regular" rate. This rate is calculated by including all remuneration earned each work week. Common remuneration that must be calculated includes on-call pay, shift differentials, bonuses, contest prizes and salary increases, including retroactive increases. When these, or other remuneration exist, the regular rate is calculated by the example below:

Let's say that an employee has earned \$100 that week for on-call pay. It is necessary to compute the regular rate to include the add-on's that may be present. In this instance, the employee's hourly wages would be added to the on-call amount and divided by the number of hours worked in the week, as follows:

$$[(\$10/\text{hour} \times 50 \text{ hours} = \$500) + \$100 = \$600], \text{ divided by the total number of hours he/she worked, (50), for a regular rate of } \$12/\text{HR.}]$$

The employee therefore must be paid, in addition to the \$10 for each of the 50 hours (plus the on-call pay already paid), which totaled \$600, an overtime premium of **one-half the regular rate** ($1/2 \times \$12 = \6) for each of the 10 hours worked beyond 40 ($\$6 \times 10 = \60), for a total of \$660.

Holiday hours worked, are not counted in the regular rate calculation because the holiday premium is already one and one half times the hourly rate. Typically, holiday pay would not be counted either, however, as negotiated in the NAPE/AFSCME labor contract, holiday pay for an observed holiday is counted as hours worked for overtime purposes.

Absence pay such as sick or vacation leave, uniform allowances, or tuition reimbursement are not counted as remuneration when calculating the regular rate of pay.

Work Week: Overtime must be paid based on an employee's established work week, and not based on the pay period. The U.S. Department of Labor defines a work week as any seven consecutive 24-hour periods, or 168 hours, although certain exceptions may exist for health care facilities, correctional personnel, and law enforcement personnel. Agencies can establish any time period as a work week, and it need not coincide with the established pay period. Overtime must be calculated based on all hours worked, and must include all remuneration earned during the separate work weeks.

Compensatory (Comp) Time

The Fair Labor Standards Act allows the use of compensatory (comp) time for employees in the public sector.

Comp time is intended for non-exempt employees only. Up to 240 hours of compensatory time (not more than 160 hours of actual overtime worked) may be accumulated by the employee, with exceptions for law enforcement, fire protection, and correctional security personnel.

As comp time accumulates, it must be paid at time and one half rates. This means that when one hour of overtime occurs, it must convert to 1.5 hours of compensatory time. When paying employees comp time, it should be paid at the employee's current hourly rate, or at the average regular rate of pay for the final 3 years of employment, whichever is higher. Between December 25 and December 31 of each year, an employee may elect, by notifying the Agency in writing, to receive payment for unused comp time which accumulated during the prior State fiscal year, ending on June 30th of that year.

Rules Covered Employees: Agencies must provide authorization for Rules covered employees to receive comp time in lieu of overtime pay. Agencies may elect to pay overtime in lieu of comp time for Rules covered employees, and may also elect to pay out the comp time balance at any time. Between December 25 and December 31 of each year, an employee may elect by notifying the Agency in writing, to receive payment for unused comp time which accumulated during the prior fiscal year.

NAPE/AFSCME covered Employees: Compensatory time policies are slightly different for labor contract covered employees. Employees have discretion to receive overtime pay or comp time, although the agency still retains the discretion to pay cash at any time for overtime compensation obligations.

OT Exemptions

The U.S. Department of Labor makes it clear that positions should be classified as exempt or non-exempt on an individual basis. Positions should not be classified as exempt or non-exempt by job titles. Each class specification published by State Personnel indicates a tentative FLSA overtime status as a guide for agencies; however, agencies are responsible to make determinations on a case by case basis. The definitions of exempt and non-exempt are described below:

Exempt: An employee who occupies an exempt position is not covered by the time and one half overtime provisions of the Fair Labor Standards Act and state law. Generally, positions considered to be exempt must meet executive, professional, administrative, or computer exemption criteria. These criteria are defined further in this guide.

Non-exempt: An employee who occupies a non-exempt position is covered by the time and one half overtime provisions of the Fair Labor Standards Act and state law. An employee is required to receive overtime for hours worked in excess of 40 hours in any work week. Other standards apply for hospital, law enforcement and fire protection employees.

Recordkeeping Requirements

Employers are required to display an official poster outlining the requirements of the FLSA, in addition to a variety of other labor laws. Information about the required posters can be found at:

<http://www.dol.gov/esa/whd/resources/posters.htm>

In addition to posting requirements, certain records must be kept for covered nonexempt workers. Agencies are responsible to ensure appropriate records are kept. The following is a list of basic records to be retained by the employer:

- Employee's full name, as used for social security purposes, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records
- Address, including zip code
- Birth date, if younger than 19
- Sex and occupation
- Time and day of week when employee's work week begins. Hours worked each day and total hours worked each work week
- Basis on which employee's wages are paid
- Regular hourly rate of pay
- Total daily or weekly straight-time earnings
- Total overtime earnings for the workweek
- All additions to or deductions from the employee's wages
- Total wages paid each pay period
- Date of payment and the pay period covered by the payment

There are four common exemptions under the FLSA; computer, professional, executive, and administrative. In **all** cases, employees must be paid a minimum salary of \$455 per week on a salary basis to be exempt.

A salary basis means that the employee regularly receives each pay period on a weekly or less frequent basis a predetermined amount constituting all or part of the employee's compensation, which amount is not subject to reduction because of variations in the quality or quantity of the

work performed. An employee is not paid on a salary basis if deductions are made for absences occasioned by the employer or by the operating requirements of the business. If the employee is ready, willing and able to work, deductions may not be made for time when work is not available.

Deductions made for absences of one or more full days due to sickness or vacation are allowed if the deduction is made in accordance with a bona fide plan, policy, or practice of providing compensation for loss of salary. Because the state offers sick leave, deductions of one or more full days are allowed, provided the employee utilizes available leave.

Deductions made for absences due to sickness or vacation are allowed if the deduction is made in accordance with a bona fide plan, policy, or practice of providing compensation for loss of salary. The State's sick leave is in accordance with a bona fide plan.

The salary basis criterion is in addition to additional criteria specific to the kind of exemption. The additional criteria for these exemptions are explained below:

Computer Exemption: General criteria needed to meet the Computer Exemption include serving as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the required duties such as design, development, documentation, analysis, creating, testing or modification of computer systems or programs based on user or system design requirements.

Professional Exemption: The Professional Exemption requires performance of primary duties which include performance of work that requires advanced knowledge, which is defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment. This exemption also requires that the advanced knowledge required be in a field of science or learning, and that the advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

Executive Exemption: In order to meet the criteria for the Executive Exemption, an incumbent's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise. Also, incumbents must customarily and regularly direct the work of two or more FT equivalent employees, and have the authority to hire and fire other employees.

Administrative Exemption: Of the most common exemptions, the Administrative Exemption remains. Generally, two criteria must be met to qualify for this exemption, besides the salary requirement referenced above. First, the employee's primary duty must be the performance of office and non-manual work directly related to the management or general business operations of the employer or the employer's customers.

To meet the requirement of performing work related to the management or general business operations, the employee must perform work directly related to assisting with the running or servicing of the business. Examples of functions that would be considered servicing the business

include advising management, planning, negotiating, representing the company, purchasing, promoting sales and business research and control.

Primary duty means the principal, main, major, or most important duty that the employee performs. Factors to consider when determining the primary duty include the relative importance of the exempt duties as compared with other types of duties, the amount of time spent performing exempt work, the employee's relative freedom from direct supervision, and the relationship between the employee's salary and the wages paid to other employees for the kind of non-exempt work performed by the employee.

Secondly, the employee's primary duty must include the exercise of discretion and independent judgment with respect to matters of significance.

The criteria analyzed to determine whether or not an employee is exempt under the Administrative Exemption include whether the incumbent exercises discretion and independent judgment (comparison and evaluation of possible courses of conduct, and action or making a decision after the various possibilities have been considered) in regards to matters of significance (level or consequence of the work performed). Generally, matters of significance may include the following:

- ✓ Whether the employee has the authority to formulate, affect, interpret, or implement management policies or operating practices
- ✓ Whether the employee carries out major assignments in conducting the operations of the business
- ✓ Whether the employee performs work that affects business operations to a substantial degree, even if the employee's assignments are related to operations of a particular segment of the business
- ✓ Whether the employee has the authority to commit the employer in matters that have significant financial impact
- ✓ Whether the employee has authority to waive or deviate from established policies and procedures without prior approval
- ✓ Whether the employee has the authority to negotiate and bind the company on significant matters
- ✓ Whether the employee provides consultation or expert advice to management
- ✓ Whether the employee is involved in planning long-or short-term business objectives
- ✓ Whether the employee investigates and resolves matters of significance on behalf of management; and

- ✓ Whether the employee represents the company in handling complaints, arbitrating disputes or resolving grievances

Typically, two to three of the criteria listed above must be met in order to classify a position as exempt under the Administrative classification.

Independent Contractors

The Classification and Compensation unit occasionally receives inquiries regarding whether or not employees are independent contractors.

Therefore, information regarding criteria used to determine whether or not an individual is an employee or independent contractor follows. Both the IRS (Internal Revenue Service) and the United States Department of Labor have information available.

According to the IRS,² businesses must weigh certain factors to determine whether a worker is an employee or an independent contractor. These factors include the following:

Behavioral: Does the company control or have the right to control what the worker does and how the worker does his or her job?

Financial: Are the business aspects of the worker's job controlled by the payer? For example, how the worker is paid, whether expenses are reimbursed, and who provides tools/supplies, etc.?

Type of Relationship: Are there written contracts or employee type benefits (i.e., a pension plan, insurance, vacation pay, etc.)? Will the relationship continue and is the work performed a key aspect of the business.

The Federal Department of Labor looks at some criteria similar to the IRS, in addition to other criteria to determine when an individual qualifies as an independent contractor. This criteria is listed below³:

- The extent to which services rendered are an integral part of the employer's business

² Information retrieved on March 9, 2009 from the IRS website on-line at:

<http://www.irs.gov/pub/irs-soi/0850101.pdf>

³ Information retrieved on March 9, 2009 from Thompson's Wage and Hour Resource Center on-line at:

<http://www.thompson.com/members/libraries/wagehour/flsaqa/viewrecord.jsp?lid=20&listID=5>

- The permanency of the relationship
- The amount of the worker's individual investment in facilities and equipment
- The opportunities for the worker to experience profit and loss
- The degree of initiative, judgment or foresight exercised by the individual who performs the services

Should you need further assistance in this matter, you are encouraged to contact your assigned Personnel Analyst.

Shared/Joint Employees

State Personnel also receives inquiries regarding employees who work for two or more State Agencies at the same time. In some cases, the State may become a joint employer; therefore overtime payment for hours worked in excess of 40 hours per week may be due.

The test to determine whether two entities are considered a joint employer includes: 1) whether the two employers are sharing employees' services so as to interchange employees; 2) whether one employer is acting in the direct interest of another employer; and 3) whether the employers are not so completely disassociated that they are deemed to be under common control and share employees⁴.

To determine whether or not employers are completely disassociated, factors that would be examined include how the employees are paid, whether or not the policies and procedures are controlled the same, and how the finances of the employers are handled.

Within the State of Nebraska, in most cases, when two state agencies employ the same individual, the situation is considered a joint employer for purposes of the FLSA.

When employees are shared in a joint employment relationship, one agency is considered the "owner" agency, and is responsible for completing payroll for the employee. The owner agency is also responsible to ensure any overtime that is owed is paid appropriately.

Payment of overtime can be paid two different ways when the employee earns different rates of pay. First, the agency can pay based on a weighted average basis. This method involves taking the

⁴ Section 250, Joint Employment, Thompson On-Line

employee's total compensation for the two jobs divided by the total number of hours worked to establish the regular rate for overtime purposes.

Secondly, the agency can pay an overtime rate based on the wage being paid at the time overtime was incurred. To do this, the employer and employee shall enter into a written agreement in accordance with Section 7 (g) of the FLSA prior to the performance of the work that the employee will be paid overtime for. The agreement indicates that the employer may pay an employee a different bona fide rate for a different kind of work, so long as there is an employer-employee understanding that different rates will apply for different kinds of work, and that the employer pays the employee time-and-a-half of that different rate for overtime hours.

Furthermore, agencies must work together to determine which agency is the "owner" agency and to work out the method of overtime payment obligations. Typically the "owner" agency is the one who has employed the employee first.

FAQ's

As agencies pose questions, State Personnel will continue to update this section of the guide with frequently asked questions. See the furlough chapter for specific FAQ's related to that topic.

- 1) **How do I convert a classified position into a discretionary non-classified position?** The number of discretionary non-classified positions an agency is allowed is found in Neb. Rev. Stat 81-1316. Agencies shall submit to the Director of Personnel notification to create a new discretionary non-classified position, or to change current discretionary non-classified positions. This notification shall include a listing of the number of employees in the agency for determination of the appropriate number of eligible discretionary non-classified positions.
- 2) **How do I move a classified employee into a discretionary non-classified position?**
If the position is occupied, a classified individual must voluntarily provide written agreement to move into a discretionary non-classified position.
- 3) **How do I convert a discretionary non-classified position into a classified position?**
An agency must submit a PDQ to State Personnel requesting a classified position. State Personnel will complete the classification process to establish and classify the position.
- 4) **Can an agency or board require timecards for exempt employees or agency directors?**
The FLSA does permit employers to require time records which would include start and stop times and days worked for exempt employees.

Website Resources

We've provided a list of websites below that you may find helpful:

State Personnel: <http://www.das.state.ne.us/personnel/>

Employee Relations: <http://www.das.state.ne.us/emprel/>

Classification and Compensation: <http://www.das.state.ne.us/personnel/classncomp/>

U.S. DOL Wage and Hour Division: <http://www.dol.gov/esa/whd/>

Employment posters: <http://www.dol.gov/osbp/sbrefa/poster/matrix.htm>

FLSA information: <http://www.dol.gov/esa/whd/flsa/>

Appendix A-Sample Furlough Plan

Sample Furlough Plan

Agencies can utilize this sample furlough plan and are encouraged to tailor this information to your own agencies needs.

FURLOUGH PLAN
Department [Insert Agency Here]
DATE

i. Explanation of employee selection—Voluntary/Involuntary

Example language: Based on a reduction of funding for the [insert program here], it is necessary for the [insert agency here] to implement a furlough of employees paid through that funding source. Current projects indicate a [insert dollars here] shortfall in funding through [insert date]. It is necessary to furlough [insert number] FTE's during the shortfall.

Agencies should further describe whether the furlough is voluntary or involuntary, or a combination of both.

ii. Tentative schedule for furlough—number of days/weeks

Agencies should describe the affected employees, positions, and FTE of the employees selected for furlough. The agency should also describe the frequency (1 day per week, 1 day per month, etc.) of the furlough for affected employees, and the duration (3 months, 6 months, etc.).

iii. When notice will be given to affected employees—Voluntary/Involuntary

Agencies should describe when notice will be given to affected employees, and how much notice [30 days, 15 days, etc.] will be provided. If voluntary, agency should describe how much time will be given for employees to volunteer prior to selection of employees for involuntary furlough.

iv. Effective date of furlough

Agencies need to indicate when the furlough will begin.

v. Duration of furlough

Agencies should indicate when the furlough is planned to end.

vi. List of labor contract or Rules covered positions with seniority dates

A list of seniority dates of affected positions shall be provided.

vii. Draft letter to employees

A draft letter (see sample letter on next page), shall be submitted as part of the furlough plan.

viii. Attachment of questions/answer sheet

Agencies may provide the FAQ's found in this document to employees.

Sample Furlough Letter

August 12, 2006

Name-Position
Agency Address
Lincoln, NE

Dear Name:

Regrettably, due to a temporary shortfall in funds related to [insert PROGRAM OR AREA], it is necessary to temporarily reduce the number of paid work hours performed by your position. You will be placed in a temporary non-duty, no-pay status one day each week beginning [insert DATE] and ending [insert DATE]. The actual day of the week on which you will be furloughed will be discussed with you and determined based on the workload and coverage needs of the work unit.

This furlough action is in no way a reflection on you or your work performance. This action is being taken as a short-term measure to address a temporary funding shortfall and is an alternative to layoff. Furlough actions allow the agency to retain valuable human resources while continuing your employment with the State of Nebraska.

If you are participating in the State Health Insurance Program, the State will continue to make the same premium contribution toward your coverage. You will continue to accrue vacation and sick leave at your current rate. Your state service anniversary date will not be adjusted as a result of this action. Should you have any questions about how this furlough action will affect your employment, please contact [insert NAME] at [insert NUMBER].

On behalf of the Department of [insert AGENCY], I want you to know your participation in the furlough program will ultimately benefit the [insert AGENCY] and the citizens of Nebraska.

Sincerely,

Director
Department of Agency

Appendix B-Sample Reduction-In-Force Policy

Sample Policy

Agencies can utilize this sample policy and are encouraged to tailor this information to your own agency needs.

Reduction-In-Force (Layoff) Policy Department [Insert Agency Here] DATE

Purpose

To establish guidelines and criteria for implementation of a reduction-in-force in accordance with Chapter 13 of the Nebraska Classified System Personnel Rules.

General Provisions

The agency director decides when a reduction-in-force is necessary, what form that will take, and what classes and positions will be affected. The need and scope, as well as any other elements, will be defined in specific plans published prior to any furlough or layoff. Voluntary reductions in work hours are not considered layoffs.

Furloughs

A furlough is defined as placing an employee in a temporary non-duty, non-pay status because of lack of funds. This is an alternative to layoff that provides for the continuation of critical work and retention of valuable human resources. Furloughs will not be used as a long-term solution .

In cases of involuntary furloughs, the agency will consider performance seniority, and funding sources in deciding who will be furloughed.

An employee may be placed on furlough for a period of consecutive days/weeks or discontinuously over a period of time (e.g., one work day per month for a six-month period).

According to State Statute 81-1320 and 81-1328, employees who regularly work less than 40 hours per week shall have sick and vacation leave earnings proportionate to their regular work week.

The agency director will determine when a furlough would be beneficial and shall develop a plan following the Nebraska State Government Furlough Guide (incorporated into the HR Information Resource Guide). Furlough plans will be submitted to the State Personnel Director for review. The Director of the Department of Administrative Services shall approve all furloughs.

Layoffs

If a layoff is deemed necessary, the agency will develop a layoff plan which complies with this reduction-in-force policy. The State Personnel Director shall review an agency's layoff plan prior to the initiation of any layoff. Layoff plans shall provide detail on what basis retention privileges are to be determined. Such plans shall not go into effect, or the notice delivered, during the period of December 15 through January 3.

The agency director shall decide on what basis retention privileges will be determined. The basis for retention shall be one, or any combination, of the following: quality of performance, length of service or any job related factor. Length of service shall mean adjusted service date and part-time service shall be considered on a prorated basis, excluding employment in a temporary status. A numerical rating system using factors established by the agency shall be used as retention criteria to assure consistency in application (for example, a satisfactory performance rating might be worth 5 points, and a better than satisfactory performance report rating might be worth 10 points). [Agencies who decide to utilize this provision should have the criteria detailed in their policy.]

Employees to be laid off shall be given as much notice as possible, but at least a 15 workday written notice prior to layoff. This period may be shortened by the agency director when emergency funding situations exist. Written documentation concerning the shortened notice shall be attached to the layoff plan.

Temporary Employees

The agency plan will not layoff permanent employees in the affected class(es) and affected geographical area, until all temporary employees within that classification and geographical area have been released.

Notice

Written notice will be provided by certified mail or in person to each affected employee at least 15 work days prior to the date of the layoff action. This time frame will only be shortened in the event of an emergency budgetary or funding shortfall. A general announcement will be provided to agency staff at the same time to provide the reason for and the effective date of the layoff.

Vacant Positions

In lieu of bumping or layoff, employees may request to transfer to vacant positions of the same or lower salary grade for which the employee is qualified to hold. Employees may apply for vacant positions of a greater salary grade, however there is no guarantee of hire.

Bumping

The agency director shall establish bumping privileges by facility and/or geographical areas and/or division and/or by total agency. [The agency should include this information in the layoff policy]. Such bumping limitations must be specifically defined and pre-set in the agency layoff plan.

Employees hired or voluntarily accepting promotion in the G (management) class code on or after July 1, 1998, shall not have bumping rights.

Bumping to a higher salary grade is not allowed. Bumping rights shall not take place between agencies.

Employees not covered by the NAPE/AFSCME labor contract cannot bump into a position covered by the NAPE/AFSCME labor contract. Vice versa, an employee covered by the NAPE/AFSCME labor contract cannot bump into a position not covered by the NAPE/AFSCME labor contract.

Employees occupying positions designated for layoff may, except in situations where unique job related factors are involved, bump employees with lesser retention privileges, as determined by the agency layoff plan, out of:

- Positions of the same class
- Positions within the same class series of a lower salary grade
- Classes the employee previously occupied of an equal or lower salary grade and held within the previous 48 months

Agencies shall give employees occupying positions designated for layoff a minimum of 3 workdays to respond to bumping options. Employees who wish to exercise their bumping options must provide written notice to the agency. This notice must include the employees signature, and also identify the bumping option to be exercised.

Layoff of Employees Eligible for Retirement

See Provisions for Leave (Chapter 10, 005.05B of the Nebraska Classified System Personnel Rules) reference deferral of sick leave payoff options upon retirement.

Salaries of Employees Exercising Bumping Rights

See Salary Administration (Chapter 8, 003.02A of the Nebraska Classified System Personnel Rules) reference salaries for employees moving downward or laterally.

Reimbursement of Moving Expenses

Reimbursement of moving expenses will not be made for employees relocated due to a layoff. (Agency Head's Discretion).

Reinstatement

Employees or former employees are eligible for reinstatement to their previous class for 24 months after layoff or bumping. Employees desiring to be reinstated shall, following notification of the availability of a position, notify the agency head in writing of the acceptance or refusal of the position within 5 workdays.

It is the responsibility of the employee or former employee to inform the Agency of any change in address. Failure to receive notification of a position's availability because of an address change shall not cause the 5 workday reply period to be lengthened.

Agency heads may return reinstated employees at, or up to, their former salary, if reemployed within 2 years. Reinstated employees may receive, at the agency head's discretion, any legislative increases granted during the period of absence.

Employees reinstated after being laid off shall not be required to serve an original probationary period.

Employees or former employees refusing a position of their previous classification and location or not acting to notify the Agency Director and/or his/her designee of acceptance or refusal, forfeit any reinstatement rights.

Former employees who were laid off, or employees who transferred to another position in lieu of layoff, shall be reinstated in the reverse order from which they were laid off or transferred.

The service date for reinstated employees shall be adjusted by the number of days in a non-paid status.

Qualified employees shall be given the opportunity to be reinstated to an available position in a lower class within the same series. Employees declining reinstatement to a position in a lower class within the same series shall be given the opportunity to be reinstated to a position of their previous class, if positions become available within the twenty-four month period.

Appendix C-Sample Layoff Plan

Sample Layoff Plan for Rules Covered Employees

Agencies can utilize this sample policy and are encouraged to tailor this information to your own agency needs.

Reduction-In-Force (Layoff) Plan Department [Insert Agency Here] DATE

This plan applies to [Insert Agency Name] employees covered by the Nebraska Classified System Personnel Rules and complies with the Agency's Reduction-in-Force Policy.

Reason for Layoff

In this area, agency should describe lack of funding, restructuring, reorganization, or any other factor that warrants a layoff.

Position[s] Affected

In this section, agency should describe positions affected including position number, classification, and employee. For example: One position (000-12345)- Administrative Assistant III, G09123, occupied by [insert employee name]

Written Notice

In the section, the agency should describe what components will be included in the written notice, and can use the example below:

The affected employee will be given at least 15 work days written notice of the impending layoff. Such written notice will include:

- 1) Reason for layoff
- 2) Effective date of layoff
- 3) Agency seniority list, if applicable
- 4) Rights and privileges afforded to laid off employees
- 5) Information referencing the Re-employment Program

Notice will be given on [insert date] with effective date of layoff being [insert date].

Bumping Options

In this section, the Agency should outline any bumping rights of the incumbent(s) being laid off.

Here's an example of a situation where there are no bumping options:

This is a one-only position; it is not part of any class series. There is only one incumbent who has not held any other positions within the previous 48 months. Therefore, there are no bumping options for this employee.

Here's an example of a situation where there are bumping options:

The laid off employee has bumping options into [insert name, position number and class].

Recall/Reinstatement

In this section, the agency should describe reinstatement rights and expectations. For example:

The affected employee will be eligible for reinstatement for 24 months after layoff.

Should the position become available within 24 months of layoff, the laid off employee will be notified in writing and will be given five (5) workdays to respond, in accordance with the agency's reduction-in-force policy.

Re-employment Program

In this section, the agency should describe the re-employment notice. For example:

The layoff notice will include information regarding the State's Re-employment Program.

Sample Layoff Letters

The layoff plan should include a draft letter to the affected employees. Templates for agency use has been included below:

● ***With no bumping privileges:***

Date

Jane Doe
1123 Any Street
Your city, NE 68444

Dear Ms. Doe:

I regret to inform you that your position will be affected by a reduction-in-force and corresponding layoff effective ____ (must be a minimum of 15 workdays from the date of this notice). The elimination of your position is in no way a negative reflection of you or your work performance. This action is necessitated based on ____ (lack of funds, reorganization, reduction in workload, etc.). On the above date, your position as ____ (insert class title) assigned to position # ____ will be vacated indefinitely.

This action is being implemented under the provisions and requirements of Chapter 13 of the Nebraska Classified System Personnel Rules and the ____ (insert agency name) Reduction-in-Force Policy, which are attached. The following information is included to inform you of your rights under the Nebraska Classified System Personnel Rules.

As there are no other positions classified as ____ (insert class title) within the agency, and you have held no other positions within the previous 48 months, there are, unfortunately, no bumping options available to you. In addition, there are currently no vacancies within the agency for you to transfer to.

You will be eligible for reinstatement to a position in your previous class for a period of 24 months after the effective layoff date, should one become available. Should such a position become available during that period, you will be notified in writing. Once notified, you have five workdays to respond indicating acceptance or rejection of the opportunity. It is your responsibility to keep this agency informed of any change in address. Failure to receive notification of a position's availability because of an address change shall not cause the five workday reply period to be lengthened.

Please contact the Nebraska Public Employees Retirement System for information concerning your retirement benefits.

Also, pursuant to Section 10.005.05B of the Nebraska Classified System Personnel Rules, you may defer payment of the one-quarter of your sick leave balance for up to twelve months, if you are eligible for retirement (agencies may want to rephrase this, depending on the employee's individual

circumstances). If you choose to defer your balance, and you return to employment with State Government, your sick leave balance would be reinstated along with your service date (minus the time in a non-pay status). If you do not return to state employment within twelve months, this agency shall pay you one-quarter of your sick leave balance. Please notify me, in writing, on or before the effective layoff date, if you wish to exercise this option.

A representative (you may insert name), has provided information regarding the state's Re-employment program, which is attached.

In summary, I sincerely regret that this action must be taken. Please know that the services of the Best Care Employee Assistance Program are available through the effective date of layoff. Contact information is available in the enclosed brochure. Please contact me with any questions you may have.

Sincerely,

_____(insert name), Director

Enc: (list attachments)

● ***With bumping privileges:***

Date

Jane Doe
1123 Any Street
Your city, NE 68444

Dear Ms. Doe:

I regret to inform you that your position will be affected by a Reduction-in-Force and corresponding layoff effective _____ (must be a minimum of 15 workdays from the date of this notice). The elimination of your position is in no way a negative reflection of you or your work performance. This action is necessitated based on _____ (lack of funds, reorganization, reduction in workload, etc.). On the above date, your position as _____ (insert class title) assigned to position # _____ will be vacated indefinitely.

This action is being implemented under the provisions and requirements of Chapter 13 of the Nebraska Classified System Personnel Rules and the _____ (insert agency name) Reduction-in-Force Policy, which are attached. The following information is included to inform you of your rights under the Nebraska Classified System Personnel Rules.

You do have a bumping option available in lieu of layoff. You do have the option to bump into _____ (insert job title) position occupied by (insert name). If you choose to exercise this option, please notify _____ (insert name) in writing by _____ (insert date and time) of your intent to bump into this position. Failure to properly notify _____ (insert name) by the deadline will indicate your acceptance of the layoff effective _____ (insert date). The additional material provided further explains this, and other options you may have. Please review this material carefully so that you fully understand your options relating to this layoff.

In summary, I sincerely regret that this action must be taken. Please know that the services of the Best Care Employee Assistance Program are available through the effective date of layoff. Contact information is available in the enclosed brochure. Please contact me with any questions you may have.

Sincerely,

_____(insert name), Director



● ***To inform employee that their position may be bumped:***

Date

Jane Doe
1123 Any Street
Your city, NE 68444

Dear Ms. Doe:

I regret to inform you that your position as a [insert class] position # [insert position number] may be affected by a lay-off in the [insert division] division. A [insert class] whose position is being eliminated through a lay-off has more seniority than you [or retention points] and may elect to bump into your position on [insert date]. This potential action is in accordance with Chapter 13 of the Classified System Personnel Rules and the [insert agency] Reduction-In-Force policy.

The order of lay-off is based on service anniversary date as adjusted for leaves of absence, layoffs, suspension, or unpaid leaves of more than 14 calendar days [if you have retention points based on other factors, insert here]. Should you have any questions about your service anniversary date [or retention points], the job classifications you have held or any other rights you may have, please contact me at [insert number].

Should I receive notification in writing that an employee being laid off wishes to exercise their bumping options regarding your position, you will then receive a subsequent lay-off notice of at least fifteen days prior to any lay-off. This notice shall include, as a minimum, the reason for the lay-off, the effective date of the lay-off, the seniority list of employees affected, and any transfer and/or bumping options. This notice will also include a listing of [insert agency] position vacancies.

Please note that this is only a preliminary notice of lay-off that might impact your position. It is possible that the affected employee will not elect to bump into your position.

I sincerely regret that it has become necessary to give you this potential lay-off notice. If you have questions, please contact me at [insert number].

Sincerely,

_____(insert name), Director



● ***To inform all staff:***

Date

Dear [Insert Agency] Employees:

I regret to inform you that [insert number] positions with the [insert department] of the [insert Agency] will be affected by a lay-off action effective [insert date]. The elimination of these positions is in no way a negative reflection on the work that has been performed.

This necessity is based on a loss of [insert amount] in revenue from [insert funding source], and the need to reduce costs to allow operations to continue within the available budgetary resources.

This lay-off action follows procedures found in Chapter 13 of the Classified System Personnel Rules and the [insert Agency] Reduction-In-Force policy dated [insert date].

Laid off employees have options that may provide for future employment opportunities with the state. These options include reinstatement rights for up to 24 months, and employees may also participate in the State of Nebraska's re-employment program.

If you have any questions about these changes please contact me at [insert phone number].

Sincerely,

_____(insert name), Director

